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Report of the Special Rapporteur on minority issues

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on minority issues, Rita Izsák. The report provides an update of her activities during 2015. It includes a thematic analysis on the topic of minorities and discrimination based on caste and analogous systems of inherited status.

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I. Introduction

1. The present report is submitted by the Special Rapporteur on minority issues, Rita Izsák. The mandate of the Special Rapporteur on minority issues was established by the Commission on Human Rights in its resolution 2005/79, as an independent expert. It was renewed by the Human Rights Council in its resolutions 7/6 of 27 March 2008, 16/6 of 24 March 2011 and 25/5 of 28 March 2014.

II. Activities of the Special Rapporteur

2. The Special Rapporteur wishes to draw the attention of the Council to the bulletin published on her website every six months, which summarizes all the activities of the mandate, including communications, press statements, public appearances, country visits and thematic reports.[1]

A. Country visits

3. The Special Rapporteur visited Brazil from 14 to 24 September 2015.[2] Brazil is a highly diverse society with countless minority groups, who migrated there as a result of a wide range of factors, including colonialism, slavery and targeted migration policies. A large focus of the visit was the situation of Afro-Brazilians, including Quilombos and other traditional communities, who remain marginalized due to historical patterns of discrimination against them; Brazilian Roma; and religious communities of African origin, including Candomblé and Umbanda communities.

B. Communications

4. The Special Rapporteur sent letters of allegation and urgent action letters to the Member States concerned based on information received from diverse sources about human rights violations perpetrated against national, ethnic, religious and linguistic minorities. Those communications and the responses thereto are publicly available.[3]

C. Additional activities

Events, conferences and outreach

5. On 20 March 2015, the Special Rapporteur participated in a side event on implementing linguistic minority rights, organized by the Permanent Delegation of the Council of Europe to the United Nations Office and other international organizations in Geneva.

6. On 16 June 2015, the Special Rapporteur held a side event in Geneva, in collaboration with the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe, on combating discrimination as a root cause of Roma marginalization. She has also established a website dedicated to the protection of Roma,

[1] www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx.
[2] A/HRC/31/56/Add.1.
[3] www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

including background information about her study of the human rights situation of Roma worldwide.[4]

7. On 16 June 2015, she participated in a side event to commemorate the first-ever International Albinism Awareness Day (13 June).

8. On the occasion of the fifth annual meeting of the Global Network of the Responsibility to Protect Focal Points, held in Madrid on 23 and 24 June 2015, she sent a video message on violence against minorities.

9. On 25 September 2015, she convened a one-day workshop in Brasilia on the situation of Roma in the Americas. A summary of the workshop will be presented to the Human Rights Council at its thirty-first session.

10. On 27 October 2015, she convened, jointly with three other special rapporteurs, a side event during the seventieth session of the General Assembly on guaranteeing attention to vulnerable groups in the 2030 Agenda for Sustainable Development.

11. On 28 October 2015, she presented her annual report to the General Assembly (A/70/212), which focused on minorities in the criminal justice system.

12. On 2 November 2015, she delivered a speech titled "An American tragedy, a bloody injustice: police killings of unarmed black men and boys" at Michigan State University.

13. On 23 November 2015, she moderated an expert meeting in Geneva on "Minorities in the criminal justice system: discussion on the draft recommendations of the eighth Forum on Minority Issues".

14. On 24 November 2015, she participated as a keynote speaker in a side event in Geneva on combating impunity, and the need for effective justice system action on behalf of minorities, organized by Minority Rights Group and the Permanent Mission of Austria to the United Nations Office and other international organizations in Geneva.

15. On 25 November 2015, she moderated a side event in Geneva on "Minority rights protection in the United Nations system: looking back and looking ahead — a forum for the future", organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and by her mandate.

16. On 26 November 2015 in Geneva, she delivered a speech at an event commemorating the fiftieth anniversary of the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination on "Fifty years of achievements: lessons learned and good practices".

Statements

17. The Special Rapporteur issued several public statements, many jointly with other mandates, highlighting issues of concern involving minorities. Those statements are available on her website.

D. Update on the Forum on Minority Issues

18. The Special Rapporteur was requested by the Human Rights Council, in its resolutions 6/15 and 19/23, to guide the work of the Forum on Minority Issues. The eighth session of the Forum was held in Geneva on 24 and 25 November 2015, with a thematic focus on minorities in the criminal justice system.

[4] www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/StudyProtectionRoma.aspx.

19. Over 500 delegates participated, including representatives of Member States, United Nations mechanisms, regional intergovernmental bodies, non-governmental organizations (NGOs) and minorities. They identified challenges involving minorities, as well as effective practices to combat discrimination against minorities during all stages of the criminal justice process. Recommendations from the Forum will be presented to the Council at its thirty-first session.

III. Minorities and discrimination based on caste and analogous systems of inherited status

A. Introduction

20. The Special Rapporteur is concerned by information she has received regarding incidents of discrimination in caste-based and analogous systems of inherited status, including atrocities committed against individuals ascribed to the lowest strata by virtue of their caste status. During the course of her work, she regularly addressed the continued plight of such people through press statements,[5] consultations, side events and thematic reports to the Human Rights Council.[6]

21. The Special Rapporteur recognizes the complexity of addressing this topic within the minority rights framework, as there exists the view that caste systems are a way to organize society without the domination of majority groups, and that therefore, "lower caste" groups may not strictly fall under the category of minority groups. However, she believes that, while many caste-affected groups may belong to the same larger ethnic, religious or linguistic community, they often share minority-like characteristics, particularly their non-dominant and often marginalized position, stigma, and the historic use of the minority rights framework to claim their rights. She further acknowledges that caste and caste-like systems are present in other groups, including some indigenous communities. Moreover, she highlights that minority groups who are characterized by their non-dominant position and whose members possess ethnic, religious or linguistic characteristics differing from those of the rest of the population are also, in many cases, caste-affected groups, and therefore face multiple and intersecting forms of discrimination on the grounds of both their minority status and descent. Consequently, she believes that a minority rights approach can provide a valuable platform for the protection of the rights of caste-affected communities and that minority rights standards, including equality, non-discrimination, consultation, participation and special measures, should be applied to combat discrimination based on caste and analogous systems.

22. The Special Rapporteur stresses that discrimination based on caste and analogous systems exists in many countries. While acknowledging important differences between affected communities in terms of the manifestation, severity and experience of caste-based discrimination, she firmly believes that there are common characteristics to caste and caste-like systems that inherently contradict the principles of human dignity, equality and non-discrimination, particularly differentiated social status, whereby individuals placed in the lowest positions are regarded as "inferior" and "non-human". The resulting extreme exclusion and dehumanization of caste-affected groups translates into individuals and communities often being deprived of or severely restricted from enjoying their most basic civil, political, economic, social and cultural rights.

[5] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13352.

[6] See, inter alia, A/69/266, A/HRC/25/56 and A/HRC/19/56.

23. Following an analysis of the information received, she further considers that caste and analogous forms of discrimination are a major cause of poverty and perpetuate poverty in affected communities. As stressed previously,[7] the relationship between inequality, discrimination and poverty and their impact on disadvantaged minority groups cannot be ignored or underestimated. Targeted attention to the situation of the poorest and most socially and economically excluded and marginalized communities is essential to break the vicious cycle of discrimination, exclusion, poverty and underdevelopment.

24. Research on caste-based discrimination outside the South Asian context is underdeveloped and the lack of official, up-to-date and disaggregated data poses additional difficulties in terms of providing a comprehensive overview of the issue. Nevertheless, the Special Rapporteur considers that devoting a thematic report to this particular topic is necessary, given that discrimination based on caste and analogous systems of inherited status constitutes a serious violation of human rights and deserves specific attention. She hopes that the present report will serve as an incentive to stimulate further and more in-depth research and investigation into caste-based discrimination around the globe.

B. Definition and characteristics of caste-based discrimination

25. Discrimination based on caste and analogous systems of inherited status refers to a form of discrimination based on descent.[8] Because one's caste can be determinative of one's occupation, it is also referred to as "discrimination based on work and descent" and defined as "any distinction, exclusion, restriction or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birthplace, place of residence, dialect and accent that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

26. The term "caste" refers to a strict hierarchical social system that is often based on the notions of purity and pollution, in which individuals placed at the bottom of the system may face exclusion and discrimination in a wide range of areas. The concept of "caste system" is primarily associated with the South Asian region, where its existence is linked to the religiously sanctioned social structure of Hinduism, which identified four original and endogamous groups, or castes, called varnas.

27. At present, the term "caste" has broadened in meaning, transcending religious affiliation. Caste and caste-like systems may be based on either a religious or a secular background and can be found within diverse religious and/or ethnic groups in all geographical regions, including within diaspora communities.

28. Caste and analogous systems present distinguishing characteristics:

(a) Hereditary nature: caste status is inherited by birth and follows the individual until death;

(b) Labour stratification and occupational segregation: caste status determines and is confined to certain occupations, which are compulsory and endogenous. Individuals from lower-caste strata are traditionally assigned to tasks deemed "polluting" or menial by higher

[7] See A/HRC/25/56, para. 31.

[8] Committee on the Elimination of Racial Discrimination, general recommendation No. 29 (2002) on article 1, paragraph 1, of the Convention (Descent).

caste groups, including sweeping, manual scavenging (cleaning of excreta from dry latrines) and disposal of dead animals;

(c) Untouchability practices: a set of collective behaviours and norms stemming from the belief that contact with individuals from lower castes is "polluting";

(d) Enforced endogamy: inter-caste interactions are limited and in some cases de facto prohibited. Manifestations of enforced endogamy include limitations or prohibitions on inter-caste marriages, commensality (the practice of eating together) and sharing common goods or services. Attempts to challenge these prohibitions are often severely punished through violence against caste-affected individuals and retaliation against their communities.

29. Existing pervasive and entrenched stigma of individuals and groups ascribed to "lower caste" strata permeates caste systems. As highlighted by the former Special Rapporteur on the human right to safe drinking water and sanitation, stigma can be understood as "a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups, often based on a feeling of disgust".[9] The process of "dehumanization" of individuals and groups owing to their low caste status begins with the association between such status and the notions of "pollution", "filthiness" and "untouchability", resulting in them being considered "impure" and "unworthy". This process evolves into widespread social segregation of affected individuals and communities who are confined to separate physical spaces and, as mentioned above, to certain degrading jobs from which they cannot break free. This imposed marginalization becomes an externalized and internalized social norm that eventually legitimatizes mistreatment and abuses against affected communities, perpetuating discrimination and patterns of human rights violations against them.

30. Stigmatization and dehumanization of affected communities is further reinforced by negative stereotypes in the media and, as the Special Rapporteur has noted previously,[10] the repeated presentation of broad negative stereotypes of minority groups as, inter alia, "dirty", which nurtures inaccurate and false assumptions and opinions that may eventually develop into discriminatory attitudes and entrenched prejudices.

C. Global overview of caste-affected groups

31. Estimates indicate that over 250 million people suffer from caste-based discrimination worldwide.[11] Though the highest numbers of affected communities are concentrated in South Asia, particularly India and Nepal, discrimination on the grounds of caste or analogous status is a global phenomenon and can be found in other geographical contexts, including in Africa, the Middle East and the Pacific region, as well as in diaspora communities. Although the following examples are not exhaustive, they aim to be illustrative of caste-affected communities in different regions.

Asia

32. Dalits constitute the largest caste-affected group in South Asia. They comprise a myriad of sub-caste groups and, although subjected to similar forms of discrimination across the region, the situation of Dalits in caste-affected countries differs for historical and

[9] See A/HRC/21/42, para. 12.
[10] See A/HRC/28/64, para. 62.
[11] www.unicef.org/protection/discrimination.html.

political reasons.[12] Dalits represent the victims of the most grave forms of caste discrimination, are often assigned the most degrading jobs and subjected to forced and bonded labour, have limited or unequal access to resources (including economic resources, land and water) and services, and are disproportionately affected by poverty.

33. In India, according to official data,[13] Dalits (referred to as "scheduled castes") constitute more than 201 million people. This figure does not include Dalits who have converted or are born and raised within non-Hindu religious communities, such as the Dalit Muslim and Christian communities; unofficial statistics estimate that the actual number of Dalits in India is much higher.[14]

34. In Nepal, official data indicate that the Dalit population comprises approximately 3.6 million people,[15] although civil society organizations estimate that number at 5 million. In Bangladesh and Pakistan, where most Dalits belong to the Hindu minority, the figures are also contested. In Bangladesh, unofficial data estimate the Dalit population to range between 3.5 and 5.5 million people.[16] In Pakistan, the most recent official data, from 1998, estimate the Dalit population to be 330,000,[17] but researchers calculate that the actual number could be at least two million.[18]

35. In Sri Lanka, three parallel caste systems (Sinhala, Sri Lanka Tamil and Indian Tamil groups) coexist; caste discrimination is found in each one. Within the Sinhala system, lower-caste groups, including the Rodi, have low levels of education, suffer extreme poverty and lack of assets and are under continued pressure to pursue hereditary caste occupations, such as removing dead animals and dirt.[19] In the Sri Lanka Tamil caste system, the bottom stratum is comprised of a myriad of groups collectively labelled as *Panchamar* and regarded as "untouchables". Population displacement due to war and the 2004 tsunami has resulted in a large internal displaced population in the Jaffna peninsula, with a disproportionate presence of *Panchamar* groups now in camps for internally displaced persons.[20] The caste system among Indian Tamils traces its origins to their arrival to the plantations as indentured labourers during the colonial era and presents unique characteristics, which differ from the traditional Indian caste system. Some features are common, however, including the avoidance of inter-caste marriage and the link between lower castes and greater levels of poverty.[21]

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[12] "Caste-based discrimination in South Asia", study commissioned by the European Commission to the International Dalit Solidarity Network (June 2009), pp. 2 ff.

[13] www.censusindia.gov.in/2011census/PCA/PCA_Highlights/pca_highlights_file/India/Chapter-2.pdf.

[14] http://idsn.org/countries/india.

[15] Central Bureau of Statistics of Nepal, "National population and housing census 2011 (national report)" (November 2012).

[16] Iftekhar Uddin Chowdhury, "Caste-based discrimination in South Asia: a study of Bangladesh", working paper series, vol. III, No. 07 (Indian Institute of Dalit Studies, 2009), p. 2.

[17] www.pbs.gov.pk/population-tables.

[18] "Caste-based discrimination in Pakistan", International Dalit Solidarity Network briefing note (May 2014).

[19] Kalinga Tudor Silva and others "Caste discrimination and social justice in Sri Lanka: an overview", working paper series, vol. III, No. 6 (Indian Institute of Dalit Studies, 2009), pp. 3–6.

[20] Paramsothy Thanges and Kalinga Tudor Silva, "Caste discrimination in war-affected Jaffna society" in Kalinga Tudor Silva and others, *Casteless or Caste-blind? Dynamics of Concealed Caste Discrimination, Social Exclusion and Protest in Sri Lanka* (International Dalit Solidarity Network, Indian Institute of Dalit Studies and Kumaran Book House, 2009), pp. 50-77.

[21] Sasikumar Balasundaram and others, "Caste discrimination among Indian Tamil plantation workers in Sri Lanka" in Tudor Silva and others, *Casteless or Caste-blind?*, pp. 78-96.

36. In Japan, feudal society stratification during the Tokunaga regime (1603-1867) placed two groups at the bottom of the system, referring to them as the *senmin* (humble people): the *eta* (extreme filth) and *hinin* (non-human). Although the Emancipation Edict was promulgated in 1871 to include the *senmin* in mainstream society, the Burakumin, as their descendants are now known, continue to be considered as an outcast group, subjected to prejudice and discrimination, including in employment, education and marriage, and physically segregated in Buraku districts.[22] Official figures estimate the total Buraku population to be 1.2 million; however, unofficial figures place the number at almost 3 million.[23]

Middle East

37. In Yemen, the Muhamasheen ("marginalized ones"), also known as Al Akhdam, constitute a minority group subjected to descent-based discrimination. There are no official data, but unofficial sources estimate their number at between 500,000 and 3.5 million. Their occupational roles include garbage collection, street sweeping and cleaning toilets and drains. They suffer from social stigma and discrimination, which exacerbate their socioeconomic exclusion and poverty.[24]

Africa

38. According to the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, there are three types of descent-based discrimination in Africa, including caste systems based on "occupational specialization of endogamous groups in which membership is based on ascription and between which social distance is regulated by the concept of pollution" and those in which discrimination is based "on real or perceived descent from slaves, leaving many in 'virtual' slavery, unable to leave their owner's employ for fear of reprisals or starvation".[25]

39. In Mauritania, the two major cultural and ethnolinguistic groups, the Arab-Berber (commonly referred to as Moors), which includes the Beidane and the Haratines (also known as black moors) and some of the Afro-Mauritanian communities (including the Peuhl, Soninke, Wolof and Bambara), present divisions along ethnic and caste lines. The Moors are further divided into tribes and castes by profession, including blacksmiths, religious leaders and warriors. Relations among the different castes are very hierarchical and result in the exclusion and marginalization of certain castes, such as blacksmiths.[26] The Haratine constitute the largest ethnic group (40 to 60 per cent of the population) but remain economically and politically marginalized. Regarded as the "slave caste", most of the present-day victims of slavery and slavery-like practices are Haratine.[27]

40. In Madagascar, there are 18 main tribes, some of which have their own caste systems, such as the Merina and the Bara. Within the Merina hierarchy, there are four main castes: the Andriana, the Hova, the Mainty and the Andevo. The Andevo (descendants of

[22] "Reality of Buraku discrimination in Japan: history, situation, challenges" (International Movement against all Forms of Discrimination and Racism, Buraku Liberation League and Buraku Liberation and Human Rights Research Institute, February 2001). See also E/CN.4/Sub.2/2001/16, para. 40.

[23] www.bll.gr.jp/eng.html.

[24] See A/HRC/30/31, para. 77.

[25] See A/HRC/17/40, para. 56.

[26] See A/HRC/26/49/Add.1, para. 9.

[27] See A/HRC/15/20/Add.2, para. 12.

slaves) face caste discrimination, especially in marriage, and are particularly vulnerable to exploitation, poverty and slavery-like practices.[28]

41. In Nigeria, discrimination against Osu descendants persists. Osu people were historically considered a property of the local deities among communities in Igboland, in south-east Nigeria. The Osu were dedicated and "sacrificed" to these gods and forced to live on the outskirts of the villages. In 1958, the Osu Abolition Law was passed, but members of the Osu are still subjected to social exclusion, segregation and mistreatment, and discrimination in employment and marriage.[29]

42. In Senegal, caste systems exist within several ethnic groups, particularly among the Wolof community, which is divided between the Geer and the Neeno. Some forms of untouchability are allegedly practised against some Neeno groups, including prohibition from residing or remaining in particular places and avoidance of physical contact.[30]

43. In Somalia, clan structure determines the composition of society, which is divided into ranked clan groups. Somalia's minorities are diverse and comprise three distinct social groups: Bantu, Benadiri and the "occupational groups".[31] The "occupational groups", also referred to as "sab" (a collective term for "low-caste"), include the Midgan (also known as Gaboye, Madguban and Musse Deriyo), Tumal and Yibro. These groups are stigmatized as being of "unholy origin" and dedicated to "polluting" occupations. Discrimination against them includes being targeted for hate speech and prohibition of intermarriage.[32]

44. Caste-affected groups have also been identified in other countries, such as Burkina Faso, Burundi, Cameroon, Côte d'Ivoire, the Gambia, Guinea, Guinea-Bissau, Liberia, Madagascar, Mali and Sierra Leone.

Diaspora communities

45. The caste system migrated with the South Asian diaspora to other regions, including Africa (Mauritius, South Africa), Europe (United Kingdom of Great Britain and Northern Ireland), the Americas (United States of America, Canada and Suriname), the Middle East (Bahrain, Kuwait and United Arab Emirates), Malaysia, Australia and the Pacific (Fiji).

D. International legal framework

46. The Universal Declaration of Human Rights establishes that all human beings are born free and equal in dignity and rights. The principle of inherent dignity of all persons permeates the entire Declaration; the preamble refers to this principle, together with the equality of human rights, as the "foundation of freedom, justice and peace in the world".

47. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to take measures to ensure "that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law" (art. 4 (1)).

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[28] See A/HRC/24/43/Add.2, paras. 7-14.

[29] See A/HRC/17/40, paras. 58 and 59; and CERD/C/NGA/CO/18, para. 15.

[30] Abdoulaye Bara Diop. *La Société Wolof: Tradition et Changement* (Karthala, 2012), pp. 25 ff.

[31] Martin Hill, "No redress: Somalia's forgotten minorities" (Minority Rights Group International, 2010), p. 8.

[32] Mohamed Eno and Abdi Kusow, "Racial and caste prejudice in Somalia", *Journal of Somali Studies*, vol. 1, Issue 2 (2014), pp. 91-118.

48. Core international human rights treaties[33] build upon the principle of the inherent dignity and equality of all persons, which is recalled in their respective preambles, and enshrine the rights to equality and non-discrimination of all persons, as well as the equal enjoyment of human rights for men and women.

49. In its general recommendation No. 29 (2002), on article 1, paragraph 1, of the Convention (Descent), the Committee on the Elimination of Racial Discrimination confirmed that the term "descent" did not solely refer to "race" and unequivocally established that descent-based discrimination "includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".

50. The Committee identified several factors that could indicate the existence of discrimination on the basis of caste and analogous systems of inherited status in affected communities, including "inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality". It also made specific recommendations, including in the areas of preventing hate speech in the media, administration of justice, political participation and the right to education.

51. In addition, the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2000/4, established that discrimination based on work and descent was a form of discrimination prohibited by international human rights law, and requested Governments concerned to put in place all necessary constitutional, legislative and administrative measures, including affirmative action, to prohibit and redress that form of discrimination, as well as to criminally sanction all persons or entities within their jurisdictions who might have engaged in practices of discrimination on the basis of work and descent.

52. The draft United Nations principles and guidelines for the effective elimination of discrimination based on work and descent constitute a comprehensive framework to assist multiple stakeholders, including States, United Nations agencies and civil society organizations, in identifying caste-based discrimination and in implementing measures to combat such discrimination. The draft principles and guidelines formulate specific recommendations to States to develop and implement a legal framework explicitly prohibiting discrimination based on work and descent and establish plans of action to enforce the abolition of untouchability and segregation at the national and local levels. They also recommend that States conduct surveys and research on affected communities, and combat discrimination based on work and descent in multiple areas, including physical security, protection against violence, access to justice, equal political participation, employment, health, food, water, housing and education.

53. At the regional level, in 2013 the European Parliament adopted a resolution on caste-based discrimination, in which it called for the European Union to promote the draft United Nations principles and guidelines as a guiding framework for eliminating caste-based discrimination and to promote their endorsement by the Human Rights Council. It also called on the European Commission to recognize caste-based discrimination as a "distinct form of discrimination rooted in the social and/or religious context" which must be

[33] www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

addressed together with other grounds of discrimination, including ethnicity, race, descent, religion, gender and sexuality, and appealed for the inclusion of caste-based discrimination as a human rights issue in future European Union human rights policies, strategies and action plans.

54. Other relevant international standards are the International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111), along with its accompanying Recommendation No. 111, and the Principles and Guidelines to Address Caste Discrimination in the Private Sector (Ambedkar Principles) of the International Dalit Solidarity Network.

IV. Specific areas of impact of discrimination in caste-based and analogous systems

55. The Special Rapporteur has identified a number of areas of particular concern in relation to caste and analogous systems. The areas described below are not exhaustive but rather provide a general overview of the most serious manifestations of caste-based discrimination.

56. The Special Rapporteur regrets the scarcity of relevant information outside the South Asian context and stresses the need for further research.

A. Civil and political rights

1. Right to life and physical integrity

57. The use of violence against individuals and communities at the lower end of caste and caste-like systems to maintain the system and perpetuate oppression is common. Attempts to alter the social order by questioning and actively defying caste rules may result in harassment, threats, physical attacks and even murder.

58. Often, claiming human rights is considered as "forbidden", and deserving of punishment. Inter-caste and inter-group marriages; demands for land rights, increased wages and political participation; and refusal to perform traditional occupations, may trigger not only economic retaliation by those most threatened by changes in the status quo, but also unleash violence.

59. In South Asia, violence against Dalits is reported to be widespread and driven by the effects of the caste system and the lack of justice for victims.[34] Although official data are scarce, information from some States indicates that the number of reported crimes against Dalits is rising. For instance, data from the National Crime Records Bureau in India reveal that reported crimes against individuals from scheduled castes increased 19 per cent in 2014 from the previous year.[35] In Nepal, Amnesty International reported that in 2014 victims of discrimination on the grounds of caste were subject to torture and other ill-treatment, including sexual violence.[36]

[34] Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015*, p. 167 ff.

[35] National Crime Records Bureau of India, *Crime in India* (2014), p. 108. .

[36] Amnesty International, *The State of the World's Human Rights 2014/15* (2015), p. 268.

2. Access to justice and policing

60. Entrenched caste discrimination within the criminal justice system translates into victims facing multiple obstacles at every stage of the legal process: from lodging a complaint to investigation, trial and judgement. Often, the fear of reprisal prevents victims from reporting attacks, resulting in underreporting and impunity. In South Asia, most violence against Dalits and Dalit communities is underreported and not addressed by Governments.[37]

61. Due to caste prejudice or deference shown to perpetrators from higher castes, law enforcement officers may refuse to register and/or investigate cases brought by individuals from lower castes.[38] In some instances, these officers perceive caste-based discrimination as a social issue to be solved within the community rather than a crime. Refusal to register such cases as criminal offences is justified as preserving "social harmony".[39]

62. According to a recent study,[40] the ways in which police refuse to register caste-based atrocities include: (a) showing apathy; (b) discouraging victims and encouraging compromises between the victims and the accused; (c) delaying arrival; (d) threatening or inflicting violence on victims; (e) bringing false cases against victims at the behest of the accused to pressure them to accept a compromise; (f) accepting bribes from the accused to drop the victim's case; and (g) declaring the accused innocent without following due process.

63. Even if such crimes pass the first stage in the process, there are long pretrial periods and the acquittal rates for these crimes are extremely high. Lower castes are also disproportionately represented in pretrial detention, owing to indiscriminate arrests, slow investigations and prosecutions, weak legal aid systems and inadequate safeguards against lengthy detention periods.[41]

3. Right to political participation

64. Political marginalization emerges as a consequence of discrimination against caste-affected communities, who are excluded from or underrepresented in both local and national decision-making. Individuals from lower-caste groups may face numerous obstacles to participation in public elections and equal opportunities to run for and be elected to public positions. These include being subject to threats, harassment and physical attacks; being forcibly prevented from standing in elections or, if elected, forced to resign or not to exercise their mandate; being excluded from electoral rolls; and being denied the right to vote.[42]

65. Caste-affected groups tend to be outvoted and unable to secure proportional representation. For instance, in Mauritania, where the Haratine comprise 40 to 60 per cent of the population, according to statistics collected by the Initiative pour la Résurgence du Mouvement Abolitionniste Mauritanie, only 11 of 147 members of Parliament are Haratine. In Yemen, the Muhamasheen have no political representation at the national level.[43]

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[37] "Caste-based Discrimination in South Asia", p. 4.

[38] See E/CN.4/Sub.2/2001/16, para. 26.

[39] OHCHR, "Opening the door to equality: access for justice for Dalits in Nepal" (2011), p. 45.

[40] Nalori Dhammei Chakma, "Equity watch 2015: access to justice for Dalits in India" (Swadhikar and National Campaign on Dalit Human Rights, 2015), pp. 38-39.

[41] Amnesty International, *The State of the World's Human Rights 2014/15*, p. 181.

[42] See CERD/C/IND/CO/19, para. 17.

[43] See A/HRC/30/31, para. 77.

66. Some caste-affected countries, including India and Nepal, have constitutional and legal requirements to reserve seats for disadvantaged caste groups in legislative bodies. In Pakistan, seats are reserved for non-Muslim minorities.

4. Freedom of religion or belief

67. Caste discrimination exerts a strong influence in the religious sphere. Individuals from the lowest castes may be barred from religious sites, relegated to separate religious buildings or separate spaces and buried in separate cemeteries.

68. Caste-based discrimination on the grounds of religion has a particular impact on women and girls. The existence of practices labelled as "religious dedication" of girls to temple deities, including the Devadasi system, constitutes a de facto form of forced prostitution and sexual slavery, mainly targeting Dalit girls.[44]

69. Minority women, many of them from low-caste backgrounds, may be subjected to kidnapping and forced religious conversion. According to the Special Rapporteur on the right to freedom of religion or belief, "such incidents seem to occur in a climate of impunity".[45] Civil society organizations have reported several cases of Dalit Hindu girls being kidnapped and forcibly converted to Islam following marriage in Pakistan.[46]

B. Economic, social and cultural rights

1. Right to work

70. Allocation of labour on the basis of caste is one of the core pillars of caste and caste-like systems, with lower castes typically confined to "polluting", "filthy" or "impure" tasks and occupations. This labour division is characterized by its extreme rigidity and exclusion, preventing individuals from the lowest strata from changing occupations and largely hindering their labour mobility. Attempts to challenge the established order may result in social punishment, including physical and psychological aggression and community boycotts.

71. Caste-based discrimination confines Dalits in South Asia to certain occupations associated with their caste, which often involve the most menial tasks, such as sanitation jobs.[47] In Bangladesh, India, Nepal and Sri Lanka, street cleaning and the handling of human waste and animal carcasses are almost exclusively performed by Dalits.[48]

72. In India, manual scavenging constitutes a caste-designated occupation that is mainly imposed upon Dalits, particularly Dalit women, who represent 95 per cent of manual scavengers.[49] Despite the passing of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act in 2013, the practice reportedly persists, institutionalized

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[44] Maggie Black, "Women in ritual slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India" (Anti-Slavery International, 2007).

[45] See A/67/303, para. 43.

[46] Pakistan Dalit Solidarity Network and International Dalit Solidarity Network, "Scheduled caste women in Pakistan: denied a life in dignity and respect", alternative report to the Committee on the Elimination of Discrimination against Women at its fifty-fourth session (2013), p. 12.

[47] International Labour Office, *Equality at Work: Tackling the Challenges* (2007), pp. 35-36.

[48] Human Rights Watch, "Caste discrimination: a global concern" (2001), p. 12.

[49] United Nations Development Programme (UNDP) and United Nations Solution Exchange, "Social inclusion of manual scavengers" (UNDP, 2012), p. 7. See also Human Rights Watch, *Cleaning Human Waste: "Manual Scavenging", Caste and Discrimination in India* (2014).

through State practice, with local governments and municipalities employing manual scavengers.[50]

73. This rigid and stratified allocation of work results in Dalits having not only limited job opportunities, but also lower wages,[51] particularly in rural areas.[52]

74. In Japan, the Buraku face job discrimination. Hiring detectives to investigate the background of job applicants is reported to be common.[53] Research highlights that, if investigations result in the person being considered as Buraku in origin, the individual is likely not to be further considered in the selection process. Despite the amendments to the Basic Resident Registration Act and to the Family Registration Law to restrict access to the family registry (Koseki), professionals who have access, including public notaries, lawyers and judicial scriveners, are allegedly often paid to obtain such information.[54]

Intersectionality between caste and contemporary forms of slavery

75. Discrimination based on caste increases the vulnerability of affected groups to contemporary forms of slavery.[55] Research indicates that forced and bonded labour is widespread within caste-affected communities, despite legal bans.[56] In South Asia, Dalits comprise the majority of people subjected to domestic bonded labour, and a large number of victims of trafficking in persons, sexual slavery and other forms of labour exploitation are members of low castes.[57]

76. In Nepal, in the agricultural sector, Haliyas ("ones who plough") are labourers effectively caught in a debt bondage system. They plough the land, a task considered dirty.[58] They are often forced to take out loans from landowners to cover personal expenses and are charged exorbitant rates of interest, making their debts extremely difficult to pay back and effectively trapping them in a never-ending cycle of submission. According to civil society reports, despite criminalization by the Government in 2010, the practice still persists and there is currently no legislation in place for the rehabilitation of Haliyas.[59]

77. In Pakistan, Dalits, who are mainly minority Hindus, are disproportionately affected by forced and bonded labour, particularly in the Sindh and Balochistan provinces.[60]

78. In Mauritania, the Haratine are the ethnic group most associated with slavery, suffering from discrimination, marginalization and exclusion as the "slave caste", although

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[50] See A/HRC/15/55 and Corr.1, para. 75.

[51] ILO, *Equality at Work: Tackling the Challenges* (2011), pp. 43 and 44.

[52] "Caste-based discrimination in South Asia", p. 5.

[53] Kenzo Tomonaga, "The International Convention on the Elimination of All Forms of Racial Discrimination and Buraku discrimination" in *Descent-Based Discrimination* (International Movement against All Forms of Discrimination and Racism, 2004), pp. 47-48.

[54] Buraku Liberation League and International Movement Against All Forms of Discrimination and Racism – Japan Committee, report to the Human Rights Committee on disclosure of evidentiary materials for just and fair justice systems, and the right to privacy and the Japanese family register system "Koseki Seido"(2013).

[55] See A/HRC/24/43, para. 15.

[56] Bethan Cobley, "International consultation on caste-based discrimination" (International Dalit Solidarity Network, 2012), p. 21.

[57] See A/HRC/17/40, para. 33.

[58] See A/HRC/24/43, para. 16.

[59] Asian Legal Resource Centre, submission to the universal periodic review of Nepal (2015), p. 4.

[60] Anti-Slavery International, *Poverty, Discrimination and Slavery: The Reality of Bonded Labour in India, Nepal and Pakistan* (2008), p. 14.

slavery is also reported to affect black African communities there.[61] Despite slavery being formally abolished and a recent anti-slavery bill passed in August 2015, the practice reportedly remains widespread, affecting predominantly the Haratine.[62] According to some estimates, 50 per cent of the Haratine community is subjected to de facto slavery through domestic servitude and bonded or forced labour; 90 per cent of those affected are women.[63]

2. Right to housing and right to water and sanitation

79. Reports indicate that caste-affected communities face discrimination in accessing adequate housing and housing segregation.[64] They may be forced to live on the outskirts of towns, or in segregated colonies or informal settlements,[65] and may also be subject to forced evictions and displacement.[66]

80. As highlighted by the Special Rapporteur on the human right to safe drinking water and sanitation, stigma associated with caste manifests, inter alia, in lack of access to drinking water and sanitation facilities and in restricted access to shared or common water and sanitation facilities.[67]

81. In Yemen, the Muhamasheen mainly reside in underdeveloped neighbourhoods on the outskirts of the capital.[68] More than half of their households rely on external water sources such as dams, streams or wells; only two out of five households have latrines.[69]

82. In Bangladesh[70] and India,[71] Dalits are often systematically excluded from access to water and sanitation. Reports indicate that Dalits may be prohibited from fetching water; have to wait in different queues when accessing wells; and, in the event of water shortage, must give non-Dalits priority. Dalits may be subjected to large-scale violence and physical attacks by members of the dominant caste when attempting to access facilities in areas inhabited by them.[72] Dalit women are particularly vulnerable to physical violence from members of the dominant castes while collecting water from public wells and taps.[73]

3. Right to health

83. Studies in South Asia demonstrate patterns of discriminatory behaviour against individuals from lower castes, particularly in health care, including denial of or restrictions on services, lack of treatment and longer waiting periods. Health-care providers spend less

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[61] See A/HRC/15/20/Add.2, paras. 9-12; and A/HRC/26/49/Add.1, para. 7.

[62] Anti-Slavery International and others, *Enforcing Mauritania's Anti-Slavery Legislation: The Continued Failure of the Justice System to Prevent, Protect and Punish* (2015), pp. 3-6.

[63] Unrepresented Nations and Peoples Organization, alternative report submitted to the Human Rights Committee at its 107th session during the consideration of the first periodic report of Mauritania (2013), p. 4.

[64] See, inter alia, E/C.12/NPL/CO/3, para. 11, and CERD/C/JPN/CO/3-6, para. 19.

[65] See A/HRC/22/46, para. 11.

[66] See E/C.12/IND/CO/5, para. 31.

[67] See A/HRC/21/42, para. 36.

[68] See A/HRC/30/31, para. 77.

[69] United Nations Children's Fund (UNICEF) Yemen situation report: Muhamasheen mapping update (2015), p. 2.

[70] See A/HRC/15/55 and Corr.1, para. 76.

[71] Rashtriya Garima Abhiyan and others, "Violations of the right to water and sanitation" (2014), p. 11.

[72] See A/HRC/21/42, para. 36.

[73] Robert F. Kennedy Center for Justice and Human Rights and Navsarjan Trust, "Understanding untouchability, a comprehensive study of practices and conditions in 1589 villages" (2010), p. 19.

time with them, and staff use derogatory or demeaning words and avoid physical contact when examining them.[74]

84. Caste-based discrimination has a direct impact on the health status of affected individuals. Statistics reveal significant disparities in health indicators, with individuals in lower castes presenting poorer health indicators than those in higher castes.

85. Women in lower castes present the worst health outcomes. For instance, a study in India[75] demonstrated stark disparities between Dalit and non-Dalit women in terms of life expectancy and access to prenatal and postnatal care.

86. In 2009, a survey by the Ministry of Health[76] in Nepal found that the maternal mortality rates for Dalit women and women from the Therai and Madhesi castes were significantly higher than those for women from higher castes.

87. Manual scavenging, the digging of graves, the cleaning of human excretions and forced prostitution also expose individuals in lower castes to a range of health hazards.[77] Research further indicates that children in lower castes are at greater risk of infections and nutritional deficiencies.[78]

4. Right to education

88. Marginalization of caste-affected groups translates into considerable disparities in educational opportunities, educational attainment and treatment by school teachers. Such differences undermine equality of opportunity in employment and hinder social advancement. According to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, discrimination against Dalits at all levels of the educational system is widespread in caste-affected countries.[79]

89. The types of structural discrimination and abuse faced by Dalit children in schools are particularly disturbing, as they are carried out by teachers and replicated by fellow students. They include segregation in classrooms, the use of derogatory terms for their caste, forcing them to perform manual work such as cleaning toilets and picking up garbage, and corporal punishment.[80]

90. Caste-based discrimination in education results in higher rates of illiteracy, a larger number of dropouts from school, and a higher risk of children from lower castes being recruited as child labourers, soldiers or sex workers and subjected corporal punishment and torture.[81]

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[74] Sanghmitra Acharya, "Access to health care and patterns of discrimination: a study of Dalit children in selected villages of Gujarat and Rajasthan", working paper series, vol. 1, No. 2 (Indian Institute of Dalit Studies and UNICEF, 2010), pp. 15 ff.

[75] Vani Borooah and others, "Gender and caste-based inequality in health outcomes in India", working paper series, vol. VI, No. 3 (Indian Institute of Dalit Studies, 2012), pp. 14-15.

[76] Bal Krishna Suvedi and others, "Nepal: maternal mortality and morbidity study 2008/2009 – summary of preliminary findings" (Family Health Division of the Department of Health Services of the Ministry of Health, 2009).

[77] See A/68/333, para. 65.

[78] P. Vart and others, "Caste-based social inequalities and childhood anemia in India: results from the National Family Health Survey 2005-2006" in *BMC Public Health* (2015).

[79] See A/HRC/23/56, para. 46.

[80] Human Rights Watch, *"They Say We're Dirty": Denying an Education to India's Marginalized* (2014), pp. 20 ff.

[81] See CERD/C/IND/CO/19, para. 25.

91. In Japan, the dropout rate for Buraku high school students is reported to be two to three times the national average. In addition, despite modest increases in college enrolment, the percentage of Buraku university students is still well below the national average.[82] In Yemen, 80 per cent of the Muhamasheen are reported to be illiterate and suffer extreme poverty.[83] In Mauritania, over 80 per cent of the Haratine do not complete primary school; they constitute only 5 per cent of students pursuing higher education.[84] In Madagascar, most of the Andevo are reportedly illiterate.[85] In Senegal, civil society reports state that children from lower castes were prevented from sitting with classmates from higher castes.[86]

5. Humanitarian assistance

92. Evidence indicates that communities in lower positions in caste and analogous systems are more vulnerable and more likely to be exposed to natural and human-made disasters and hazards than those from higher castes, for several reasons.[87] For example, their marginalized socioeconomic status may translate into a lack of or limited access to amenities and information. The location and infrastructure of their homes, usually in remote and marginal lands such as floodplains, coastal towns and unstable hillsides, on the periphery of settlements and poorly equipped in terms of basic amenities such as drains, flood barriers and drinking water, may also increase their vulnerability to natural disasters.

93. Research[88] has found that, when emergencies arise, such communities are often not only the most affected but are also less likely to receive humanitarian aid and rehabilitation. Analysis of emergency responses to natural disasters in South Asia, including in India, Pakistan, Sri Lanka[89] and, most recently, Nepal,[90] have demonstrated that Dalits suffer from acute caste discrimination throughout all the phases of disaster response, from rescue to rehabilitation. They are also the most affected by climate change due to their living in flood- and drought-prone areas.[91]

94. Reports indicate that discriminatory practices against Dalits in humanitarian response include priority given to dominant castes in rescue operations; denial of or unequal access to relief camps, food, water, health services, shelter, housing and education; segregation in camp facilities; prohibition of use of the common sanitation facilities; segregation in commensal groups; lack of compensation or restitution of assets due to lack of documentation to claim entitlements related to land and property; and lack of participation of affected communities in decision-making regarding reconstruction.[92]

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[82] Kenzo Tomonaga, "The International Convention on the Elimination of All Forms of Racial Discrimination and Buraku discrimination", pp. 54-55.

[83] See CCPR/C/YEM/CO/5, para. 12.

[84] According to the Haratine manifesto ("Manifeste pour les droits politiques, économiques et sociaux des Haratines au sein d'une Mauritanie unie, égalitaire et réconciliée avec elle-même" (April 2013).

[85] See A/HRC/24/43/Add.2, para. 12.

[86] African Assembly for the Defense of Human Rights and International Dalit Solidarity Network, "Alternative report on the situation of castes in Senegal" (July 2012), p. 3.

[87] International Dalit Solidarity Network, "Equality in aid: addressing caste discrimination in humanitarian response" (2013), pp. 3-4.

[88] National Dalit Watch-National Campaign on Dalit Human Rights, "Addressing caste discrimination in humanitarian response" (2011).

[89] Timothy Gill, "Making things worse: How 'caste-blindness' in Indian post-tsunami disaster recovery has exacerbated vulnerability and exclusion" (Dalit Network Netherlands, 2007).

[90] www.amnesty.org/en/documents/asa31/1753/2015/en.

[91] Bethan Cobley, "International consultation on caste-based discrimination", p. 18.

[92] International Dalit Solidarity Network, "Equality in aid: addressing caste discrimination in humanitarian response", pp. 4-5.

V. Situation of caste-affected women and girls

95. Caste is one of the factors that result in multiple and intersecting forms of discrimination against certain groups of women.[93] Women and girls from low castes are particularly vulnerable to violation and denial of their rights in both public and private life.

96. They are often the victims of caste-based violence, particularly sexual violence.[94] A study[95] identified 12 major forms of violence against Dalit women: nine in the community (physical assault, verbal abuse, sexual harassment and assault, rape, sexual exploitation, forced prostitution, kidnapping or abduction, forced incarceration and medical negligence), and three within the family (female feticide and infanticide, child sexual abuse and domestic violence).

97. Available data indicate that caste-based violence against women and girls, in particular sexual violence, may be increasing. Violence and the threat of violence are frequently hidden and go unreported in villages and rural areas, forming a culture of invisibility, silence and impunity which, in many instances, places the burden of shame on victims instead of perpetrators.

98. Women from disadvantaged caste groups are also the main victims of trafficking,[96] and are especially vulnerable to early and/or forced marriage,[97] bonded labour[98] and harmful cultural practices. Accusations of witchcraft are sometimes made to deprive Dalit women of their basic economic and social rights, including access to land and their assets.[99]

99. Atrocities against women from marginalized castes are often committed when they try to assert their rights and challenge caste and gender norms.[100] Perpetrators include dominant caste landlords, police officers, doctors and teachers, with the "punishment" both being expressive of caste outrage and intended to teach the woman and her community a lesson.[101]

100. Dalit women face obstacles in accessing formal justice systems. These include the refusal by police officers to register criminal complaints or delays in filing complaints, lack of proper investigation into complaints of violence and ill-treatment, and insensitivity by law enforcement officials.[102]

101. Women from caste-affected communities, particularly in rural areas, are often excluded from political processes and relegated to secondary or subordinate roles in decision-making. It is reported that rural Dalit women holding seats in the local panchayat

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[93] See Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on article 4 (1) of the Convention (temporary special measures), para. 12; and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 18.

[94] See A/HRC/26/38/Add.1, para. 15, and A/HRC/26/38/Add.2, para. 16.

[95] Aloysius Irudayam and others, "Dalit women speak out, violence against Dalit women in India" (National Campaign on Dalit Human Rights, 2006), pp. 3-4.

[96] See A/HRC/26/38/Add.1, para. 28.

[97] See A/HRC/29/40, para. 23.

[98] Anti-Slavery International, *Poverty, Discrimination and Slavery*.

[99] See A/HRC/20/16, para. 39.

[100] Evidence, "Atrocities against Dalit women and access to justice"(2011), p. 4.

[101] International Dalit Solidarity Network and others, "Violence against Dalit women", briefing note for the eleventh session of the Human Rights Council.

[102] Minority Rights Group International, written contribution to the general discussion on access to justice at the fifty-fourth session of the Committee on the Elimination of Discrimination against Women (2013).

(town assembly) have been forced to stay at home and be represented by their husbands at meetings. Those who have attempted to speak in the panchayat have been subjected to backlash, and even violence, against members of their caste.[103]

102. Outside South Asia, information on caste-affected women and girls is scarce. In Japan, a survey by the Buraku Liberation League revealed that Buraku women experienced discrimination in a wide range of areas, including marriage, employment and health care, and approximately 30 per cent had suffered from sexual violence.[104] In Mauritania, Haratine women are reported to be at greater risk of violence, in both the public and private spheres, and to suffer from high levels of sexual violence, including rape and marital rape, domestic violence and sexual assault.[105]

103. Human rights violations against women and girls because of their caste status also include extremely disadvantaged social and economic conditions that have a direct impact on the enjoyment of their economic, social and cultural rights. Women and girls from lower castes have lower literacy levels and are more likely to be prevented from pursuing education. Many perform dangerous and unprotected work, including manual scavenging, and receive lower salaries. Many also have no or limited access to public services, including health care, as well as to government schemes and entitlements, and are de facto prohibited from owning land.[106]

VI. Initiatives and good practices to address caste-based discrimination

A. United Nations system

104. The issue of discrimination based on descent and, in particular, caste-based discrimination, has been gaining momentum in the United Nations system for the past two decades. The Committee on the Elimination of Racial Discrimination has been instrumental, as it first addressed discrimination based on caste and on similar forms of social hierarchy as a form of discrimination based on descent, as provided in article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, and has also addressed the issue in its reviews of affected States. The adoption of general recommendation No. 29 (2002) consolidated the Committee's interpretation of article 1 (1) and formulated a global definition of caste-based discrimination: "discrimination based on caste and analogous systems of inherited status".

105. The work of the former Sub-Commission on the Promotion and Protection of Human Rights has been of vital importance in the process of giving visibility to the issue of caste-based discrimination. Following its resolution 2000/4, declaring that discrimination based on work and descent was a form of discrimination prohibited by international human

[103] Navsarjan Trust and others, "The situation of Dalit rural women", submission to the general discussion on rural women of the Committee on the Elimination of Discrimination against Women (2013), p. 3.

[104] Buraku Liberation League Central Women's Division, "What the survey findings tell us: Buraku Women" in *Minority Women Rise Up: A Collaborative Survey on Ainu, Buraku and Korean Women in Japan* (International Movement against All Forms of Discrimination and Racism, 2004), sect. 1.2.

[105] Unrepresented Nations and Peoples Organization and Initiative pour la résurgence du mouvement abolitionniste Mauritanie, submission for the second periodic review of Mauritania (2015), p. 6.

[106] Navsarjan Trust and others, alternative report to the Committee on the Elimination of All Forms of Discrimination against Women for its examination of the fourth and fifth periodic reports of India (2014).

rights law, the Sub-Commission appointed an expert to prepare a working paper on the topic to identify communities in which discrimination based on occupation and descent was ongoing, as well as to make concrete recommendations for the effective elimination of such discrimination. The outcome document (E/CN.4/Sub.2/2001/16) focused on countries in Asia only. Two Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent were subsequently appointed, which led to the draft United Nations principles and guidelines for the effective elimination of discrimination based on work and descent, yet to be formally endorsed by the Human Rights Council.

106. In 2013, the guidance note of the Secretary-General on racial discrimination and protection of minorities explicitly recommended that United Nations action and policies "reflect the fact that persons targeted for discrimination based on descent, in particular caste-based discrimination and related practices, are in a number of contexts in a particularly marginalized position and in need of focused attention".

107. In 2014, the United Nations network on racial discrimination and the protection of minorities developed an action plan to support the implementation of those recommendations, including preparing "guidance for the United Nations system on key challenges, priorities and strategic approaches to combat discrimination based on work and descent". At the time of writing the present report, a guidance tool on descent-based discrimination, including key challenges and strategic approaches to combat caste-based and analogous forms of discrimination, was being finalized.

108. Special procedure mandate holders have also begun to address caste-based discrimination in their communications to States and in thematic and country visit reports.

B. National legislation and special measures

109. Progressive and instrumental steps that can be taken by States to protect caste-affected communities include the following: identification of communities who suffer from discrimination on the basis of caste and analogous systems of inherited status; explicit recognition of caste-based discrimination as a human rights violation in national normative frameworks; ad hoc legislation to combat specific forms of discrimination on the grounds of caste and analogous systems; the establishment of special measures, including reservations, quotas and targeted schemes; and the effective implementation of legislation and special measures.

Constitutional provisions

110. In South Asia, several constitutions explicitly refer to "caste" as one of the grounds for prohibited discrimination, including those of Bangladesh (art. 28), India (arts. 15 and 16), Nepal (art. 18), Pakistan (arts. 22, 26 and 27) and Sri Lanka (art. 12.2 and 12.3). Furthermore, the constitutions of India (art. 17) and Nepal (art. 24) explicitly outlaw "untouchability".

111. Outside South Asia, constitutional references to "caste" are limited. Examples include the constitutions of Burkina Faso (arts. 1 and 23) and Mauritius (art. 16.3). Some constitutions do not list "caste" as one of the prohibited grounds for discrimination, but provide specific references to discrimination based on analogous systems of inherited status. For example, in Japan constitutional provisions prohibit discrimination based on, inter alia, "race, social status or family origin" (art. 14). In the Constitution of Somalia, "clan" affiliation is one of the prohibited grounds for discrimination (art. 11).

112. Specific constitutional or legislative provisions establishing reservations or quota systems for caste-affected groups have been adopted in some countries. In India, the

Constitution and its amendments permit special measures for the social and educational advancement of marginalized communities, including scheduled castes, and provide reservations of electoral seats in the Lower House and state legislatures for scheduled castes. The new Constitution of Nepal contains several provisions for safeguarding the rights of Dalits, including in employment, education and health care, and articulates a political system based on proportional representation for disadvantaged groups, including Dalits, minorities and women, at the local and national levels.

Specific legislation

113. Specific legislation to combat caste-based discrimination in all its manifestations is instrumental to criminalize discriminatory practices, bring perpetrators to justice and provide redress to victims. Nevertheless, poor levels of both implementation of legislative measures and accountability, or a lack thereof, result in prevailing impunity and the perpetuation of caste-based discrimination.

114. In South Asia, India and Nepal have enacted specific legislation to combat caste-based discrimination. In India, two of the most recent laws are the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill (2015) and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act (2013). Nepal enacted the Caste Based Discrimination and Untouchability (Offence and Punishment) Act in 2011, which criminalizes such discrimination in private and public spheres.

115. In Japan, the Law on Special Measures for Dowa Projects, enacted in 1969 and in force until 2002, was aimed at improving the living conditions in identified Buraku districts (Dowa districts) by improving access to welfare, employment and education, and providing redress in cases of discrimination against Buraku people.

116. In the United Kingdom, the passing of the 2010 Equality Act brought the caste-discrimination issue into the public arena. Since its amendment in 2013, the Act now includes caste as an aspect of race, following advocacy from civil society organizations and the recommendation of the Committee on the Elimination of Racial Discrimination in its 2011 review of the State.[107]

Specialized institutions

117. In its general recommendation No. 29 (2002), the Committee requested States to "establish statutory mechanisms, through the strengthening of existing institutions or the creation of specialized institutions, to promote respect for the equal human rights of members of descent-based communities".

118. In 2002, Nepal established a National Dalit Commission tasked with a twofold objective: to increase the participation of Dalit communities "in the mainstream of national development" and to create a favourable environment for Dalit communities.[108]

119. In 2004, India established the National Commission for Scheduled Castes as a separate body[109] with a wide-range of functions, including monitoring implementation of legislation on scheduled castes, investigating complaints and reporting periodically on the status of implementation of legislation.

[107] See CERD/C/GBR/CO/18-20, para. 30.
[108] http://ndc.gov.np/site/cms/12.
[109] www.ncsc.nic.in.

C. Civil society initiatives

120. Civil society organizations are instrumental in advancing the cause of caste-affected communities through advocacy at both the national and international levels, networking and implementation of specific programmes and campaigns to combat caste and caste-like discrimination. There are numerous good practice initiatives led by civil society actors to eradicate caste-based discrimination against Dalit communities in South Asia;[110] however, similar initiatives to combat discrimination against other caste-affected groups in other regions are, with some exceptions, still emerging.

121. In Mauritania, the Initiative pour la résurgence du mouvement abolitionniste Mauritanie was established in 2008 by a prominent Haratine leader to advocate for the eradication of slavery and slavery-like practices, as well as to take specific cases before judicial courts.

122. In Yemen, the All Youth Network for Community Development was set up by young people belonging to the Akhdam minority (Muhamasheen) to work at the local level to eliminate caste discrimination. Its programmes target education, political participation, human rights education and capacity-building.

VII. Conclusions and recommendations

123. **Discrimination based on caste and analogous systems is a global phenomenon, affecting more than 250 million people worldwide. This serious human rights violation infringes upon the basic principles of universal human dignity and equality, as it differentiates between "inferior" and "superior" categories of individuals because of their inherited caste status. It also leads to extreme exclusion and dehumanization of caste-affected communities, who are often among the most disadvantaged populations, experience the worst socioeconomic conditions and are deprived of or severely restricted in the enjoyment of their civil, political, economic, social and cultural rights.**

124. **Discrimination based on caste and analogous systems is deeply embedded in interpersonal and communal relationships in caste-affected countries. Therefore, overcoming it will require not only legal and political responses, but also community-based approaches aimed at changing the mindsets of individuals and the collective conscience of local communities. In this regard, formal and informal community education and open dialogue from an early age are essential elements to ensure that the principles of human dignity and equality generally are accepted and respected.**

125. **The Special Rapporteur acknowledges that further in-depth studies of caste-affected communities, particularly outside of South Asia, are needed in order to comprehensively assess the situation of and specific challenges facing such groups and implement adequate measures to combat caste-based discrimination that affects them. To that end, the collection of data disaggregated by, inter alia, caste, sex, ethnicity, religion and language is essential to adequately map affected groups in caste-affected countries. Data collection programmes should allow for diverse forms of self-identification and comply with international standards regarding the right to privacy.**

126. **Discrimination on the basis of caste and analogous systems is a major cause of poverty, inequality and social exclusion of affected communities. In the implementation of the 2030 Agenda for Sustainable Development, States should**

[110] Bethan Cobley, "International consultation on caste-based discrimination", pp. 48-54.

consider including caste-specific indicators to ensure that the Sustainable Development Goals and their targets address the situation of affected groups.

127. The Special Rapporteur believes that relevant elements and standards emanating from the minority rights framework, including equality, non-discrimination, consultation, participation and special measures, can contribute to the protection of the rights of caste-affected communities and should be applied to combat discrimination based on caste and analogous systems.

128. States should adopt specific legislation prohibiting discrimination on the grounds of caste and/or analogous systems. Existing legal frameworks to combat caste discrimination must be adequately and fully implemented and include appropriate penalties for acts of caste-based discrimination.

129. States should conduct awareness-raising campaigns at the national and local levels, targeting both affected communities and the wider public to sensitize them against caste discrimination and analogous forms of such discrimination. These campaigns should inform the public about the various manifestations, legal prohibitions and penalties associated with caste discrimination, and victims should be informed of their rights and available means of legal recourse to bring to light caste-based discriminatory practices and obtain redress.

130. Comprehensive national action plans and budgets to combat discrimination based on caste and analogous systems should be urgently developed and implemented in caste-affected countries. Plans should have clear objectives and measures in a wide range of areas, including poverty reduction strategies, employment, health, housing, education and access to basic services, including water and sanitation. They should include specific attention to the issues of caste-affected women, be developed in coordination with affected groups and local organizations working with them and be provided with sufficient funding. Their progress should be regularly monitored.

131. Special measures, including reservations, quota systems and/or schemes, should be put into place and enforced in specific areas, including employment, education, and public and political institutions, in order to guarantee the effective participation and representation of affected communities in public life.

132. Women and girls are particularly vulnerable to caste discrimination, as they suffer from multiple and intersecting forms of discrimination owing to both their gender and unprivileged caste status. They are disproportionately subjected to dire human rights violations, including violence and, particularly, sexual violence, trafficking, early and/or forced marriage and harmful traditional practices. They face obstacles in accessing justice and redress and are excluded or relegated to a secondary or subordinate role in decision-making processes. Caste-affected States should urgently take robust action to eradicate such violations through, inter alia, the enactment and effective implementation of specific legislation and the adoption of special measures, policies and programmes to address the entrenched situation of marginalization and exclusion experienced by women and girls owing to their caste status.

133. Ad hoc supervisory bodies or specific departments in national human rights institutions should be established to address and monitor caste-based discrimination, where relevant. They should analyse existing domestic legislation, and recommend programmes and provide advice on public policies to enhance the implementation of non-discrimination legislation. They should provide complaint-handling services, including by receiving complaints, conducting investigations and initiating or pursuing legal actions in relation to cases involving caste-based discrimination. These

bodies should be independent and provided with sufficient funding, resources and staff to adequately fulfil their mandate.

134. **Law enforcement officers should receive training to identify and adequately respond to cases of caste-based discrimination, particularly those involving caste-based violence. Rapid-response protocols should be developed and implemented by police officers to attend to victims and conduct in situ investigations. Criminal penalties should be established for law enforcement officers who neglect or intentionally decide not to investigate and/or prosecute complaints filed by individuals regarded as "low caste". Recruitment of members of affected communities into law enforcement agencies should be encouraged, including through the establishment of a quota system for caste-affected individuals.**

135. **Human rights education in schools should be a mandatory subject. Language in school textbooks should be revised to eliminate stereotypical and prejudicial portrayals of caste-affected communities and contest the social construction of caste and caste-like systems and related notions, including untouchability and segregation.**

136. **Specific measures should be developed to tackle discrimination, including on the grounds of caste, in all development and disaster recovery actions and programming. Implementation of caste-analysis methodology in the humanitarian assistance framework to adequately identify affected communities, as well as the implementation mechanisms to ensure that humanitarian relief is equally distributed, is fundamental to prevent caste-based discrimination from being replicated in humanitarian response actions.**

137. **States should extend invitations to special procedure mandate holders to assess the situation of caste-affected communities in their respective countries and request their assistance for technical cooperation.**

138. **The draft United Nations principles and guidelines for the effective elimination of discrimination based on work and descent should be promoted by States and endorsed by the Human Rights Council.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on minority issues on her mission to Brazil

Note by the Secretariat

The Special Rapporteur on minority issues, Rita Izsák, undertook an official visit to Brazil from 14 to 24 September 2015.

Brazil has developed a plethora of strong institutions, programmes and policy initiatives to address the human rights of minorities. These include mechanisms to combat racism, affirmative action programmes and other anti-discrimination initiatives. The Special Rapporteur observed, nevertheless, that minorities in Brazil, most notably Afro-Brazilians, who self-identify as a political minority despite being a demographic majority, continue to face multiple impediments to the full enjoyment of their human rights. Following a long history of slavery and oppression, Afro-Brazilians experience racial discrimination and face severe disadvantage compared with other Brazilians: they are subject to high levels of violence, including violence perpetrated by the State; they face impunity for crimes committed against them; experience lower levels of socioeconomic development; are subjected to extremely high rates of incarceration; and Afro-Brazilian women and girls remain vulnerable to abuse. Moreover, despite affirmative action policies, Afro-Brazilians remain largely excluded from positions of power and influence.

In the report the situation of particular minorities, including Quilombo and other traditional communities, is also considered, together with that of Brazilian Roma (*Cigano*). The Special Rapporteur also observes that, although there is generally a high degree of religious tolerance in Brazil, one exception is the situation of Afro-Brazilian religions, which are facing an increasing number of incidents of violence, intimidation and discrimination.

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Report of the Special Rapporteur on minority issues on her mission to Brazil*

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* Circulated in the language of submission only.

I. Introduction

1. The United Nations Special Rapporteur on minority issues, Rita Izsák, conducted an official visit to Brazil from 14 to 24 September 2015. In Brasilia, she met with officials of the Ministry of Foreign Affairs, the Ministries of Justice, Education and Culture, the Secretariats for Human Rights, Policies for Women and Racial Equality, the National Institute for Colonization and Agrarian Reform, the Office of the Federal Prosecutor, the Federal Supreme Court, and the Federal Attorney General's Office for Citizens' Rights. She also consulted with the Resident Coordinator and representatives of United Nations agencies, as well as a wide range of representatives of civil society and social movements.

2. In the states of Rio de Janeiro, São Paulo and Bahia, the Special Rapporteur met with authorities working on issues of minority rights and with members of marginalized communities. This included visits to the Santa Marta *favela* (slum) in Rio de Janeiro, and the *periferia* Brasilandia on the outskirts of São Paulo. She also visited two Quilombos; Ivaporunduva (El Dorado municipality, São Paulo state) and Pitanga Dos Palmares (Bahia), and met with representatives of other Quilombos. She also visited a Roma (*Cigano*) neighbourhood in the municipality of Simões Filho, Bahia.

3. She consulted with various religious minorities, including representatives of the Muslim community, and religious organizations. She also met with Afro-Brazilian religious leaders, and visited a *Candomblé terreiro* (Afro-religious temple) in Salvador.

4. At the conclusion of her visit, the Special Rapporteur convened a one-day workshop on the situation of Roma in the Americas, which brought together representatives of Roma communities from Argentina, Brazil, Canada, Chile, Colombia, Ecuador and Peru. The workshop was a follow-up to the Special Rapporteur's 2015 comprehensive study on the human rights situation of Roma worldwide (A/HRC/29/24).

5. The Special Rapporteur expresses her appreciation to the Government of Brazil for the support provided in the organization and facilitation of the visit. She was pleased to undertake the visit in order to gain a better understanding of the unique minority rights protection schemes in Brazil, such as its disaggregated data collection and affirmative action policies, and will continue to explore how these positive practices may be translated to other countries and regions.

6. The Special Rapporteur also thanks the United Nations and the various minority communities, individuals, civil society organizations and social movements which shared their stories with her, as well as providing indispensable assistance in the coordination of the visit.

II. Who are the minorities in Brazil?

7. With a population of more than 204 million people, Brazil is a highly diverse society, with countless minority groups which migrated there on account of a wide range of factors, including colonialism, slavery and targeted migration policies.

8. Originally inhabited by indigenous peoples, Portuguese colonization in the sixteenth century saw the first mass influx of Europeans into the territory. The colony quickly entered the slave trade, and soon became the largest importer of African slaves in the Americas. It is estimated that up to 5 million Africans were brought to Brazil as slaves, although many did not survive the treacherous sea crossing. Slavery quickly became central to the colonial economy, and gained particular importance in the mining and sugar cane industries, which fast became entirely dependent on slave labour.

9. Brazil was the last nation in the Western Hemisphere to abolish slavery, in 1888. Yet the deep social divide created did not dissipate with abolition. On the contrary, as political and economic power remained concentrated in the hands of the white landowners, Afro-Brazilians had limited means or opportunity to establish their homes or develop livelihoods. This led to the development of impoverished *favelas*, which further entrenched their disadvantage and marginalization.

10. The early twentieth century saw the mass migration to Brazil of approximately 5.2 million Western Europeans, facilitated by immigration policies of "*branqueamiento*" (whitening), which were designed to boost the white population and "improve" the racial balance of the country. Brazil now has sizeable minority communities of Western-European heritage. During this period Brazil also facilitated other migration schemes, including from Lebanon and Japan.

11. As a result of this history, twentieth-century Brazil became a place of ethnic, racial and religious diversity. Owing to widespread inter-ethnic relationships, as well as the absence of legalized segregation, a political discourse emerged labelling Brazil as a "racial democracy" – a theory which posited that all groups in Brazil experienced conditions of juridical and social equality. Yet while it is true that some groups, notably those who migrated to Brazil as part of the *branqueamiento* agenda, were able to enjoy social and economic success, others, most notably Afro-Brazilians, remained severely marginalized owing to historically rooted patterns of discrimination, as well as ongoing structural discrimination.

12. Since the 1940s, scholars, activists, historians and civil society have exposed the inequalities between the white and Afro-Brazilian populations, and have debunked the racial democracy discourse as a myth. Nevertheless, the pervasive way in which it permeated the Brazilian psyche has made it difficult for Afro-Brazilians to advocate on issues of racism and discrimination. The racial democracy myth has contributed to false assumptions that the marginalized situation of Afro-Brazilians is attributable to factors of class or wealth, rather than racial factors or institutional discrimination.

13. Approximately 4.5 million people belong to so-called "traditional peoples and communities" in Brazil, and occupy approximately 25 per cent of the national territory. Decree 6040 of 2007 defines traditional communities as culturally differentiated groups which recognize themselves as such, which have their own forms of social organization, which occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral and economic continuity, using knowledge, innovations and practices generated and passed on through tradition (item I, art. 3). Traditional communities include many Afro-Brazilian communities as well as those of indigenous descent. They also include Quilombos, communities established by escaped African slaves in diverse and often remote and isolated regions of Brazil, as well as a range of other groups.[1].

14. Brazil also has a notable Roma (*Cigano*) population. Not a homogenous group, the Roma population of Brazil is made up of distinctly different groups and subgroups which differ in religion, mother tongue, cultural and traditional practices and lifestyles. Estimates indicate that more than 500,000 Roma currently reside in Brazil, making it the largest Roma population in the Americas.

15. In terms of religious diversity, while the country is predominately Roman Catholic, the religious landscape of Brazil is undergoing changes. Between 2000 and 2010, the

[1] See http://basilio.fundaj.gov.br/pesquisaescolar_en/index.php?option=com_content&view=article&id=1399:traditional-peoples-and-communities&catid=54:letter-t&Itemid=1.

Roman Catholic population of Brazil decreased from 74 per cent to 65 per cent, while the percentage of Evangelicals has been rising. There are also a number of minority religions in Brazil, including traditional Afro-religions. In addition, Brazil is home to various indigenous faiths and spiritualities, as well as sizeable Buddhist, Muslim and Jewish communities, among others.

III. Methodology

16. The Special Rapporteur focuses on minority groups whose non-dominant status requires measures to allow them to exercise their rights to the fullest. The Special Rapporteur also observes that, in accordance with general comment No. 23 (1994) of the Human Rights Committee on article 27 (rights of minorities), the existence of minorities is neither dependent on a decision by the State alone nor limited to officially recognized minorities, but should be based on objective and subjective criteria and the principle of self-identification.

17. Thus despite their numerical majority, in view of their non-dominant situation, widespread marginalization and self-identification as a political minority, one focus of the Special Rapporteur's visit to Brazil was the situation of Afro-Brazilians, including Quilombo and other traditional communities, as well as *Terreiro* Afro-religious communities. The Special Rapporteur therefore views her visit as a follow-up to the visit to Brazil in 2014 of the Working Group of Experts on People of African Descent (see A/HRC/27/68/Add.1).

18. The Special Rapporteur has also focused on the situation of the Roma (*Ciganos)*, who, despite being present in Brazil for many centuries have remained a largely invisible minority.

19. The Special Rapporteur further observed that Brazilian society is currently experiencing demographic changes. As it gains economic strength, Brazil is increasingly becoming a country of destination for migrants, as well as refugees and asylum seekers, who are often in vulnerable situations in society. These communities often lack adequate access to social services. In particular, the Special Rapporteur learned of large communities of Bolivian migrant workers, often employed in low-paid and even exploitative jobs, as well as the recent migration of considerable numbers of Haitians, some of whom have been victims of violent attacks, apparently on account of their race and nationality. There are also reports of abuses against other new migrant communities, in particular those from Africa, who seem to be particularly targeted on account of their racial identity. While it was beyond the scope of the visit to fully analyse the situation of these migrant communities, she observes that, as these groups begin and to identify as Brazilian minorities, Brazil must remain attentive to their rights, in accordance with the Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities (A/RES/47/135), and remain vigilant against discrimination against these communities.

20. Finally, although indigenous peoples are an important minority in Brazil, facing significant human rights challenges, in view of the specific international legal framework developed for the rights of indigenous peoples (see A/HRC/12/34/Add.2), the visit of the Special Rapporteur did not focus on the situation of indigenous peoples.

IV. Minority rights: legal and institutional framework

A. International legal framework

21. Brazil has ratified the core United Nations human rights instruments and some of the optional protocols thereto, which contain numerous legal obligations regarding the rights of minorities. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

22. Brazil has also ratified International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) which was implemented into domestic law through Presidential Decree 5.051 of 2004. Notably, the lands protected under Convention No. 169 include all lands used for traditional activities by traditional groups, and the Convention is therefore applicable to all traditional communities. Convention No. 169 further provides that governments should: (a) consult the peoples concerned through adequate procedures and in particular through their representative institutions, whenever legislative and administrative measures are passed that could affect them directly (art. 6). The Special Rapporteur notes with regret that, in June 2014, Congress representatives of the agribusiness and industrial sectors tried to cancel Brazilian commitment to Convention No. 169.

23. Brazil is also party to the Inter-American Convention on Human Rights and the additional protocol thereto in the area of economic, social and cultural rights, both of which have important implications for minorities. Brazil has also supported the establishment of the Organization of American States Special Rapporteur on the Rights of Persons of African Descent and against Racial discrimination, and signed the Inter-American Conventions against Racism, Racial Discrimination and Related Forms of Intolerance (A-68) and against All Forms of Discrimination and Intolerance (A-69). The Conventions, which still require approval and ratification by Congress, require the establishment of a committee for the prevention and elimination of racism, racial discrimination and all forms of discrimination and intolerance, which will strengthen efforts to combat racism in Brazil and the region.

24. Importantly, constitutional amendment No. 45 of 2004 confers on human rights treaties the status of constitutional amendments. Human rights treaties ratified prior to the amendment are considered to be supralegal provisions and the constitution must be interpreted in conformity therewith.

B. National legal framework

25. Brazil is a federal republic with 26 states, a federal district and 5,507 municipalities. The states have powers to adopt their own constitutions and laws; their autonomy, however, is limited by the federal constitution, which specifically protects human rights.

26. It is set forth in article 3 of the constitution that the fundamental objectives thereof include the reduction of social and regional inequalities and the promotion of the well-being of all, "without prejudice as to origin, race, sex, colour, age and any other forms of discrimination". The fundamental right of equality before the law is established under article 5, together with that of freedom of conscience and of belief and the protection of places of worship (sect. VI); the prohibition of discrimination by reason of religious belief (sect. VIII); the criminalization of acts of racism (sect. XLII) and the outlawing of discrimination against fundamental rights and liberties (sect. XLI).

27. At the federal level, Brazil has also adopted a series of dedicated laws on racial inequality. Law 7716 of 1989, as modified by Law 9459 of 1997, prohibits racism and discrimination based on ethnicity, religion or nationality, and criminalizes racial discrimination and discrimination based on ethnicity, skin colour, religion and nationality. The Statute on Racial Equality (Law 12288 of 2010) also prohibits racism and discrimination as well as guaranteeing the rights to non-discrimination and racial equality in other fields including health, culture, housing, work, education and freedom of belief and conscience. Several states have passed their own racial equality legislation. For example, the State of Bahia has adopted a statute on fighting racism and religious intolerance (Law 13.182 of 2014).

28. Law 10369 of 2003 amended the General Education Law and makes the teaching of the history and culture of Africa and Afro-Brazilians at the basic and secondary levels obligatory. Under Article 33 of the Law of Guidelines and Bases of Education, religious teaching is optional and schools must respect the religious diversity of Brazil and not allow proselytism.

29. Decree 6040 of 2007 recognizes the existence of distinct traditional peoples and communities, and establishes that their rights must be guaranteed and respected. The Decree also established the National Policy for the Sustainable Development of Traditional Peoples and Communities, whose main objective is to promote the sustainable development of traditional peoples and communities, with emphasis on the recognition, strengthening and guarantee of their territorial, social, environmental, economic and cultural rights, with respect and appreciation of their identity, their organization and their institutions.

30. A specific legislative framework has been established for Quilombo communities. The 1988 constitution, through its articles 215 and 216, provides that Quilombo lands are to be considered Afro-Brazilian Cultural Territory and should be protected as a national public asset. In addition, article 68 of the Temporary Constitutional Provisions Act, enabling decree 4887 of 2003, provides for further legal recognition of the rights of Quilombo communities to the demarcation of their lands and territories.

31. While general prohibitions against discrimination remain relevant for Roma communities, to date there has been no other legislation concerning discrimination against Roma specifically. However, there is a Roma Bill currently pending before the Senate, which, if adopted, will provide important legal recognition of the rights of Brazilian Roma as a minority group. The Ministry of Education has also developed curriculum guidelines for travelling populations, which may be relevant for Roma who travel (resolution CNE/CED No. 3 of 2012). Administrative instruction No. 940 of 2011 of the Ministry of Health, which regulates the system of national health cards, is also pertinent for Roma, as it affirms that it is not necessary to have a permanent address, thereby ensuring that nomadic Roma communities are not excluded from the system. Finally, Presidential Decree of 25 May 2006 established the National Day of Brazilian *Cigano*, an important symbolic step recognizing Roma as an integral part of Brazilian society.

C. Institutional framework

32. There are some positive institutional initiatives at the federal and state levels that advance the rights of minority communities. Of particular note is the establishment of federal secretariats with the same status as ministries on issues relevant to minority rights, including the Secretariat for Policies for the Promotion of Racial Equality, the Special Secretariat for Human Rights and the Secretariat for Policies Involving Women's Rights. In October 2015, these secretariats were merged into one, larger, Ministry of Women, Racial Equality and Human Rights.

33. The Racial Equality Act also established the National System for the Promotion of Racial Equality (*Sistema Nacional de Promoção da Igualdade Racial*), a coordination mechanism which aims to promote the implementation of the set of policies and services regarding racial discrimination across a range of ministries. Another mechanism is the National Council for Racial Equality Policies (*Conselho Nacional de Promoção da Igualdade Racial*). A collegiate consultative body, the main mission of the Council is to draw up racial equality promotion policies. Chaired by the National System, the Council is composed of 22 agencies of the Federal Government, 19 civil society organizations and 3 experts.

34. The Palmares Foundation, a public institution under the Ministry of Culture (Law 7.668 of 1988), is mandated to formulate, promote and implement programmes and projects which recognize, preserve and promote the contribution of African cultures to Brazilian society. It plays a key role in raising awareness about religious intolerance through seminars and by providing financial and technical support.

35. The National Commission for the Sustainable Development of Traditional Communities, established by decree on 27 December 2004 and amended by decree on 13 July 2006, which comes under the Ministry of the Environment, is responsible for coordinating and monitoring the implementation of the National Policy for the Sustainable Development of Traditional Peoples and Communities. The Commission is composed of 15 government representatives and 15 civil society representatives.

36. Quilombos have their own self-representative body, the National Coordination Body of Rural Black Quilombo Communities. Although not yet representing all Quilombos, the Coordination Body operates through State Coordinators which report to the national body.

37. Furthermore, at the national level, a number of newer mechanisms have been established to better address minority rights. These include a human rights hotline to report human rights violations and seek redress, and a new national police ombudsman, as well as a National Forum for Police Ombudsman of each state. These mechanisms are still nascent, and should be strengthened and supported so that they can effectively and meaningfully carry out their mandate.

38. States have also developed important initiatives in the field of minority rights. Some have established their own secretariats for human rights, with specific departments working on discrimination and racial equality. In São Paolo, for example, the Municipal Secretariat for Human Rights and Citizenship, created in January 2013, is in the process of developing its own ombudsman. Bahia has also developed its own Public Ombudsman. Elected by civil society organizations, the Bahian model provides that its Ombudsman has as its mandate to bring issues of concern to the attention of State authorities. The Special Rapporteur observed that the model was effective, in that community members felt trust in the Ombudsman who, being elected by them, was genuinely representative of their interests and understood their concerns. However, the office was severely underresourced for dealing with the considerable workload it faced, and experienced significant pressure to meet the expectations of civil society in fulfilling its mandate. The Bahia State Secretariat for Human Rights has also established the Nelson Mandela Referral Centre to Combat Racism and Religious Intolerance. The centres operate as a platform and bring together a range of actors to provide legal and psychosocial support for minorities facing discrimination or abuse.

39. The private sector also plays a role in supporting minorities, in particular through the S-System, a system of social contributions paid by companies in order to finance autonomous social services, which supports the development of community spaces and programmes for marginalized communities.

40. Brazil has also taken some important steps to strengthen institutional mechanisms for Roma. The Secretariat for Policies for the Promotion of Racial Equality has developed an interministerial working group on Roma, and Roma are also to be included in the next multi-year plan (2016-2019). The National Human Rights Programme (NHRP-3), established by Decree 7031 of 2009, included the provision that the States "ensure the conditions for Gypsy camps throughout the national territory in order to preserve their traditions, practices and cultural heritage." (guideline 7, strategic goal III, para. (k)). Outreach is being undertaken to better integrate Roma into the Single Registry System, which provides access to social benefits. Additionally, in recent years, Roma representatives have been included in the National Council for Racial Equality Policies, and the National Commission for the Sustainable Development of Traditional Communities. On February 8, 2014, a Gypsy working group, whose members included Roma representatives, was established within the Department of Literacy, Continuing Education, Diversity and Inclusion at the Ministry of Education. The working group launched the publication "Gypsies – Guidance Document for the Teaching System", which contains a series of recommendations for educators on expanding Roma access to education. The Secretariat for Policies for Women has also convened the First National Meeting of Roma Women, and committed to supporting the participation of five Roma women in the Fourth National Conference on Policies for Women, to be held in March 2016.

41. The Special Rapporteur acknowledges the overall significant economic progress made by Brazil in recent decades. With an estimated 25 million people brought out of extreme poverty in the last decade, Brazil has largely met the Millennium Development Goals. Noteworthy programmes in this regard have included the cash transfer programmes, *Minha Casa, Minha Vida* and *Bolsa Familia*, whereby beneficiaries commit to a series of conditions aimed at guaranteeing the well-being and health of the family. Brazil has also raised the minimum wage from $70 to $400 over the course of several years. While these achievements have certainly assisted many minority communities, inequality, in particular for Afro-Brazilians and other minorities, has remained.

42. Finally, Brazil committed in its universal periodic review to the establishment of a national human rights institution.[2] In June 2014, Congress passed Law 12.986, which transformed the Council for the Defence of Human Rights (*Conselho de Defesa dos Direitos da Pessoa Humana)* into the National Human Rights Council (*Conselho Nacional de Direitos Humanos*). With a more participative structure and a clearer role for civil society, the new body also has a stronger institutional mandate to promote and protect human rights. Concern remains however, that the legislation does not go far enough to ensure that the new Council is fully independent of the executive functions of government.

D. Data collection and affirmative action policies

43. Brazil has a commendable practice of collecting socioeconomic data disaggregated by race. Data collection plays a vital role in revealing inequalities between groups in society and informs appropriate action to address them.

44. In this connection, Brazil has been a regional leader in the development of affirmative action policies. Decree 4886 (2003) and Quota Law 12711 (2012) established quotas of 20 per cent for Afro-Brazilians in various public institutions and universities. Importantly, in April 2012 the Supreme Court unanimously ruled the use of racial quotas in

[2] See A/HRC/21/11, recommendation 119.19.

education to be constitutional. Quotas are now established by individual universities on the basis of State Law and demographics.[3]

45. There are also specific government-led affirmative action initiatives to increase the representation of Afro-Brazilians. Law 12990 of 2014 established an affirmative action programme for federal civil servant positions countrywide, reserving 20 per cent of these positions for Brazilian *negros* (blacks) and *pardos* (mixed race). This also applies to public companies controlled by the federal government. It is notable that some Brazilian states, such as Mato Grosso, Paraná, Rio de Janeiro, and Rio Grande do Sul, and cities including São Paulo, have enacted similar affirmative action policies for their civil servants.

46. The quota system, however, has some shortcomings. It does not apply to the legislative and judicial branches and also excludes "positions of trust", which are often the decision-making posts. Thus, in the judiciary, only 15.7 per cent of judges are Afro-Brazilians and Afro-Brazilians hold fewer than 10 per cent of posts in higher courts.[4] There are currently no Afro-Brazilians judges on the Supreme Court. In Bahia, where 76.3 per cent of the population identify as Afro-Brazilian, of 470 prosecutors in 2013, only 9 were Afro-Brazilian.[10]

47. The Special Rapporteur also observes that federal parliamentary quotas have been rejected. This has translated to low levels of Afro-Brazilian political representation. At the time of the visit, self-identified Afro-Brazilian descendants occupied only 8.5 per cent of the seats in the *Câmara* (House). The 81-seat Senate had only one Afro-Brazilian member. There is presently only one Afro-Brazilian minister.

48. It should also be noted that, although quotas are not applicable to the private sector, the Secretariat for Policies for the Promotion of Racial Equality has been working on a voluntary programme with specific companies, and publicly recognizes good practices in this regard.

V. Principal human rights concerns facing Afro-Brazilian communities

49. Brazil undoubtedly has, at both the federal and state levels, numerous laws, policies and programmes aimed at addressing the situation of Afro-Brazilians. Nevertheless, sharp inequalities remain for Afro-Brazilians across the full spectrum of human rights. While it is beyond the scope of the present report to analyse all the human rights concerns facing Afro-Brazilians, the Special Rapporteur highlights some of the principal violations she observed.

A. Violence

50. The Special Rapporteur was shocked to learn about the levels of violence in Brazil. Regrettably this violence has a clear racial dimension. Of the 56,000 homicides that occur each year, 30,000 victims are between 15 and 29 years old, of which 77 per cent are Afro-Brazilian male youth.[5] What is disconcerting is that a significant number are perpetrated by the State, often through the apparatus of the military police. Research reveals that the number of Afro-Brazilians who have died as the result of police actions in the state of São Paulo is three times greater than that registered for the white population. In Rio de Janeiro,

[3] The Committee on the Elimination of Racial Equality has noted that such policies play an important role in achieving the objective of eliminating racial discrimination (see general comment No. 32).

[4] See www.cnj.jus.br/images/dpj/CensoJudiciario.final.pdf.

[5] See https://anistia.org.br/campanhas/jovemnegrovivo/.

in 2013, nearly 80 per cent of the victims of homicides resulting from police interventions were Afro-Brazilian, of whom 75 per cent were youth between 15 and 29 years of age.[6] In addition to the killings committed by police on duty, it is believed that a large number of deaths are also caused by so-called death squads and militias made up primarily of civil and military police and other agents of the State (see A/HRC/11/2/Add.2).

51. The Special Rapporteur further observes that, compounding the violence itself, is the widespread impunity surrounding such crimes. Police officers are seldom brought to justice and the vast majority of the victims do not obtain any kind of reparation. For example, a recent review of 220 investigations of police killings opened in 2011 in the city of Rio de Janeiro found that, after four years, only one police officer had been charged.[7] Given the widespread nature of the impunity, witnesses of police killings rarely go to the police to testify for fear of retaliation. This is compounded by deficiencies in witness-protection programmes and a lack of protection for human rights defenders. As a result of the high death rate, and the ensuing impunity, social movements have labelled the situation a "genocide of black youth".

52. One of the instruments enabling these homicides and the surrounding impunity is the so-called "resistance followed by death" (*autos de resistência*). A remnant of the military dictatorship, this mechanism essentially operates to legitimize homicides by police on the grounds of self-defence and in practice operates to create a shield of impunity for police officers. Draft Bill 4471 of 2012 is currently pending before Congress and is aimed at eliminating this by establishing procedures for the preservation of crime scenes and for better investigation at the federal level. The Special Rapporteur strongly believes that the passage of the Bill into law would mark a significant turning point in addressing the abuse of police power. This has already been evidenced in Rio de Janiero, where a resolution by the State Civil Police to stop applying the *autos de resistência* mechanism has allegedly had a positive impact in reducing the number of police homicides. However, she observes that abolishing this mechanism must be accompanied by other measures, including the restructuring of the police force, in particular the abolition of the military police, and the strengthening of the independent police ombudsman. The Special Rapporteur further notes that, on 4 January 2016, the Superior Council of Civil Police Chiefs issued a joint resolution abolishing the use of the term *auto de resistência*, with a view to guaranteeing that homicides committed by security agents are duly investigated. It is hoped that this resolution will indeed contribute towards the passing of draft bill 4471.

B. Criminalization of Afro-Brazilians

53. The Special Rapporteur is also concerned about the criminalization of Afro-Brazilians. It is estimated that 75 per cent of the Brazilian prison population is Afro-Brazilian (see A/HRC/27/68/Add.1, para. 68). Studies also reveal that, if charged, Afro-Brazilians are disproportionately subject to imprisonment and are more likely to be kept in prison and deprived of alternative options.[8]

54. This inequality is sustained by the approach to policing, with reports indicating that Afro-Brazilians are more often stopped by the police. In this context the Special Rapporteur is also concerned about the consequences of the so-called "war on drugs" which is an important factor in the criminalization of Afro-Brazilians. The ambiguities of the current

[6] "You Killed My Son", Amnesty International, 2015.

[7] Ibid.

[8] Relatório de Aplicação de Penas Alternativas do IPEA, Available from www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150325_relatorio_aplicacao_penas.pdf.

drug legislation enable police to discriminate against and criminalize people with a certain ethno-social profile. Afro-Brazilians found in possession of drugs are often charged with the more serious crime of trafficking, while their white counterparts may be charged with possession, or simply given a warning. Prison statistics attest to this reality. Since 2005, the year before the Drug Law (11.343/2006) was passed, the number of people jailed for drug-related offences increased by 344.8 per cent. Indeed, 63 per cent of women and 25 per cent of men in prison today are there because of drug-related crimes.[9] Given the high proportion of Afro-Brazilians incarcerated, the nexus is clear. In this context, the Special Rapporteur welcomes the fact that article 28 of the Drug Law is currently under consideration by the Supreme Court, which may result in the decriminalization of drugs possession for personal use.

55. The Special Rapporteur is alarmed at the proposed constitutional amendment currently pending in Congress to lower the age of criminal responsibility from 18 to 16 years of age. The Special Rapporteur notes that, should the bill be passed into law, it will not only contravene the recommendations of the Committee on the Rights of the Child, but will also have immediate impacts on Afro-Brazilian youth, and perpetuate the criminalization of Afro-Brazilian community.

56. Communities also voiced their concerns about the portrayal of Afro-Brazilians as criminals in the media, which also serves to justify the use of lethal force for alleged involvement in criminal gangs. Concerns were also raised about the concentration of mainstream media in the hands of few, and that Afro-Brazilian journalists are rarely able to penetrate these monopolies to provide alternative narratives to the dominant discourse.

C. Social and economic conditions

57. Regrettably, poverty in Brazil continues to have a colour. Of the 16.2 million people living in extreme poverty, 70.8 per cent are Afro-Brazilian.[10] The average wages for Afro-Brazilian Brazilians are 2.4 times lower than those earned by citizens of white and Asian origin. Of the illiterate, 80 per cent are Afro-Brazilians, and 64 per cent of Afro-Brazilians have not completed basic education. The Special Rapporteur also notes the situation of extreme disadvantage experienced in *favela* and *periferia* communities, which are often dominated by Afro-Brazilians. For youth in such neighbourhoods, limited access to quality education, a lack of community and leisure spaces, high rates of school dropout and of crime mean that youth have few ambitions or life perspectives. Living on the margins of society, residents reported that they felt that their communities were forgotten and being completely left behind.

58. In *favela* Santa Marta the Special Rapporteur observed the impact of the presence of Police Pacification Police Units (UPPs), public security initiatives deployed to take back control of areas from criminal gangs. The presence of the Units has contributed to reducing certain crime rates. Yet the Special Rapporteur was concerned at the fact that the Units were the sole government initiative in the *favela*. The Units, while remaining heavily armed and continuing to carry out policing functions, also administer social services and educational programmes. As police agents of the State, the Units are not well placed, nor adequately trained, to carry out such social functions. The Special Rapporteur warns that, as the number of Units increases across Brazil, this may contribute to the further militarization of *favela*-dwellers lives. The establishment of Units must therefore be counterbalanced by

[9] See www.cnj.jus.br/files/conteudo/arquivo/2015/11/080f04f01d5b0efebfbcf06d050dca34.pdf.

[10] *Síntese dos Indicadores Sociais – Uma Análise das Condições de Vida da População Brasileira 2010* (Instituto Brasiliero de Geografia e Esttastica, Rio de Janeiro, 2010).

equal investment in community-run initiatives, as well as other social programmes designed and developed with the participation of community members.

D. Afro-Brazilian women

59. Afro-Brazilian women are often in exacerbated situations of marginalization and disadvantage. A recent study revealed that Afro-Brazilians women and girls are more likely to be victims of violence: in 2013, 66.7 per cent more Afro-Brazilian women were killed than white women and girls.[11] Afro-Brazilian women are also overrepresented in low-skilled jobs, such as domestic work, and there are few Afro-Brazilian women in positions of power. In addition, Afro-Brazilian women are highly overrepresented in prison populations, compared with their white counterparts. In connection with the "war on drugs", between 2005 and 2013, the number of women imprisoned for drug-related crimes grew 290 per cent,[12] with the impact on Afro-Brazilian women considerable. The large numbers of Afro-Brazilians male homicides have a significant impact on Afro-Brazilian women, as the mothers, wives and sisters of these slain youths, and who are not provided with any psychosocial support or redress.

60. Afro-Brazilian women and girls are particularly vulnerable to violence, including sexual violence and domestic violence, in particular in marginalized communities such as *favelas* and *periferias*. Indeed, in *periferia* Brasilandia, girls as young as 10 and 11 told the Special Rapporteur that they were forbidden from leaving their houses after school for fear of being raped, a regular occurrence in the neighbourhood. In these communities, as well as elsewhere, the school dropout rate for Afro-Brazilian girls is high, as they are often obligated to take up household duties, including the care of younger siblings. Similarly, teenage pregnancy rates remain high, particularly in poorer areas. The maternal mortality rates for Afro-Brazilian women remain comparatively high (see A/HRC/27/68/Add.1, para. 86).

VI. The rights of Quilombo and other traditional communities

61. Quilombos and traditional communities find themselves amongst the most socially and economically excluded peoples, even in relation to other Afro-Brazilian communities. These communities not only suffer the severe problems of racism, structural discrimination, and violence, but also face additional discrimination as poor, peripheral and often rural communities. This vulnerability has severely impeded their ability to make effective rights claims regarding their lands and resources.

A. Demarcation of Quilombo lands

62. Although constitutional recognition was an important symbolic step towards recognizing the rights of Quilombos, almost 20 years later, the pledge remains largely unfulfilled. To date, only 189 deeds have been issued, corresponding to 0.1 per cent of the national territory. While there are currently 1,516 open processes for demarcation, it is estimated that more than 3,000 Quilombos exist throughout Brazil. Moreover, the cumbersome and somewhat technical procedures mean that, even for those recognized communities, demarcation regularly takes up to six years. Even when a positive decision is

[11] See www.mapadaviolencia.org.br/pdf2015/MapaViolencia_2015_mulheres.pdf.

[12] Ministerio de Justicia, INFOPEN 2014, available from: www.justica.gov.br/noticias/mj-divulgara-novo-relatorio-do-infopen-nesta-terca-feira/relatorio-depen-versao-web.pdf.

made by the National Institute for Colonization and Agrarian Reform to demarcate lands, legal challenges filed against decisions result in cases often being stalled before the courts for up to 15 years. At the current pace, it is estimated that it would take 250 years to fully demarcate all officially recognized Quilombola lands.

63. Without clear, formal, title to land, thousands of Quilombo communities must continue to struggle for economic, social, and political viability. The National Institute for Colonization and Agrarian Reform reported that the increasing economic importance of land in Brazil, including for agribusiness, biofuel production and extractive industries, has put additional pressure on the Quilombo demarcation process.

64. Regrettably, the Special Rapporteur learned that the constitutionality of the Presidential decree regarding Quilombola demarcation has been challenged. Should the decree be held by the Supreme Court to be unconstitutional, there is a serious danger that all progress made in recognition of Quilombo lands will be undone. Of further concern is Constitutional Amendment Proposal 215/200, which, if approved, would accord the National Congress the power to demarcate and ratify Quilombola and indigenous lands. This would undoubtedly further burden communities seeking title to lands.

B. Free prior and informed consent

65. Free prior and informed consent is also a central principle in the protection of Quilombola and other traditional communities as they seek to maintain control of their lands under pressure from State and private actors.[13] The Special Rapporteur has learned of the repeated failure to implement this right with regard to development projects taking place on the lands of these communities, with grave consequences for communities and traditional livelihoods.

66. In Quilombo Ilha da Maré, a traditional fishing Quilombo in Bahia, development projects have been undertaken on Quilombo lands without the consent of the community. Authorized through environmental impact assessments that were allegedly insufficient, the projects have led to the poisoning of lands and waters, and the concentration of heavy metals in water and soil. This has resulted in high rates of cancer in the community, including numerous deaths of young children from heavy metal poisoning. Furthermore, owing to the influx of workers, Quilombola women have become particularly vulnerable to sexual and gender-based violence.

67. Of further concern is the grave situation in Quilombo Dos Macacos, in the greater metropolitan area of Salvador, where the installation of a Navy base on the traditional lands of the community has effectively partitioned the lands, and the Navy keeps record of families and their members, as well as relatives and guests as regular visitors. Members allegedly face abuse and violence, including torture and sexual violence against women perpetrated by members of the Navy.

68. In Dos Palmares Quilombo, although the local Quilombo community had successfully claimed title to their lands, a prison placed near the community without their consent has brought negative social and environmental impacts, with sewage from the prison polluting the river, a key water source and source of livelihood for the community. Furthermore, plans for a railway line which will directly cut through the community was

[13] The applicability of free prior and informed consent to Quilombos was noted by the ILO Committee of Experts on the Application of Conventions: see www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2700476.

presented to the community as a *fait accompli*, with a compensation package that was not negotiated with their participation.

69. The various Quilombo communities in the Vale do Ribiera region of Sao Paolo and neighbouring Paraná State, important regions for agribusinesses, reported the presence of various projects on their lands, including pine plantations, mining and dams and other extractive industries, all without respect for the principle of free prior and informed consent. The Special Rapporteur is additionally concerned that environmental justifications have also been used in this region, infringing Quilombo rights to lands and territories. For example, some Quilombos in the Vale do Ribiera region have had their traditional lands usurped by State parks, leading to a situation where communities are physically divided, and are forbidden even from crossing the parks to access their own lands. Moreover, Quilombolas have not been given any role to participate in the management of the parks, through the provision of jobs or conservation efforts. The Special Rapporteur notes that allowing Quilombos whose traditional territories may now constitute national parks to use parts of those parklands for traditional cultivation purposes or subsistence farming, or to enter or to access other parts of their territories, should not be considered as being in conflict with environmental priorities.

70. Although ILO Convention No. 169 should be applied on an equal basis to traditional communities, the Special Rapporteur also observed that it is seldom properly implemented for those peoples who often reside in remote impoverished areas, who largely sustain themselves through communal subsistence activities, and who remain some of the more invisible and marginalized minorities in Brazil.

71. For example in the State of Norte de Minas, *Gerazeiros* communities, who have already experienced the negative impacts of decades of commercial eucalyptus cultivation, which destroyed much of their lands, are now being threatened by a mining project of the Sul America de Metais. The project would involve the exploitation of low-grade iron in open air mines, along with the construction of a pipeline. Although the project is only at the initial licensing phase, *Gerazeiros* communities that live in the region of Grão Mogol, Padre Carvalho and Josenópolis, in addition to others that live in the path of the pipeline, have not been adequately consulted. Allegedly, public hearings were held to discuss the licensing process and the environmental impact assessment, without giving communities adequate notice to prepare their participation. Their request to delay the hearing was denied and at a second public hearing many traditional peoples were subjected to intimidation when they attempted to raise their concerns. Moreover, the National Agency for Water has already granted the company authorization to use 6,200m3/hour of the waters from the nearby Irapé damn, without an environmental impact study or any community participation. This will allegedly aggravate the existing water shortage in the region and have serious impacts on the traditional livelihoods of the *Gerazeiros*.

72. *Pantaneiros* communities, who reside in the wetlands and engage in subsistence activities of fishing, small-scale communal agriculture and pastoralism with collective livestock, have also been impacted by large-scale monoculture soy production on their traditional territories. The communities observe that these projects have disrupted their pastoral corridors and that toxic chemicals used for the cultivation of the monocrops flow off into their lands and water resources, poisoning other arable lands and destroying water resources. The *Pantaneiros* communities have also observed new prospecting for calcium and iron mining taking place again without their consent.

73. Decree 6040 recognizes the importance of land and territory for the survival and culture of traditional communities. However, as they are not afforded the same legal rights to demarcation compared with indigenous peoples or Quilombo communities, the Special Rapporteur fears that traditional communities are often overlooked in the pursuit of the economic and developmental policies and objectives of Brazil, which have generally

favoured large-scale development projects, including extractive industries, agribusiness and infrastructure projects.

C. Social services including education

74. Quilombos and traditional communities are also often lacking access to basic services, such as education, access to health services, sanitation and basic infrastructure, including roads, transport and communication services. The Special Rapporteur learned that, in some cases, a Quilombo child will need to walk 5-6 kilometres just to reach the bus stop to travel to school each day, in order then to travel one hour to school, where she or he will be unable to perform well because of constant fatigue. In another Quilombo visited, students are only provided two hours of class per day, even for pupils up to 15 years of age Few Quilombos have local schools with teachers from their communities. In view of this, the Special Rapporteur notes that, even if affirmative action programmes exist, if Afro-Brazilians, including Quilombolas, are unable to better access quality basic education, these programmes will remain powerless to address inequalities.

VII. Roma

75. Roma have been present in Brazil since colonization of the territory, with the first record dating back to 1574 and have continued to migrate to Brazil for diverse reasons; sometimes fleeing persecution in Europe, sometimes seeking new horizons.

76. Three main Roma ethnic groups reside in the country: Kalon, Roma and Sinti, with various subgroups. Although precise numbers are still not available, the Government estimates that there may be upwards of 500,000 Brazilian Roma,[14] and a recent mapping project indicates that Roma may be present in as many as 337 municipalities, in more than 21 states, 196 of which already participating in social programmes. The states with the largest number of recognized *Cigano* camps include Minas Gerais (58), Bahia (53) and Goiás (38). The Special Rapporteur learned that, in reality, there are nowadays very few Roma communities which travel.

77. Despite the lack of data, Roma continue to be a disadvantaged, socially excluded, and largely invisible minority in Brazil. They face particular challenges with regards to accessing education, employment, health, housing and social security. Illiteracy is high, and access to public health services, education, social security, employment and housing can also be challenging, often hindered by stigmatization, institutional racism and discrimination. Early marriage remains prevalent for girls, and Roma also experience difficulties regarding the protection and preservation of their traditions and cultural heritage.

78. Stereotypes such as the "lazy gypsy" remain widespread, and Roma are often characterized as vagabonds and perpetrators of kidnapping, stealing, cheating, sorcery and witchcraft. Roma complained that these stereotypes are perpetuated by the mainstream media, including a recent soap opera in which Roma were negatively portrayed as stealing gold from dead bodies and looting graveyards. In this connection, Roma consulted reported experiencing direct discrimination on account of their ethnicity, including not being welcomed in hotels, or on public transport, or people fearing to approach, talk to or befriend them.

[14] See www.seppir.gov.br/comunidades-tradicionais/relatorio-executivo-brasil-cigano-1.

79. The Special Rapporteur notes that, until recently, the existence of Roma as an ethnic minority within Brazil has been largely ignored, and knowledge about Roma as a long-standing Brazilian minority has been limited. Regrettably, this invisibility has served to compound their marginalization, as evidenced by the lack of official programmes, policies or projects dedicated to tackle their specific challenges. In recent years, however, the Government has begun to rectify this gap (see para. 39 above). The Special Rapporteur commends the Government on its commitment to include Roma as a demographic category in the next census, to be held in 2020, which will be an important tool to better map the Roma population in Brazil. The Special Rapporteur notes, however, that the inclusion of Roma as a census identity without combating the discrimination they face may not be sufficient, as individuals may be reluctant to identify as Roma because of the associated discrimination and social stigma. The Special Rapporteur further notes that the centuries of exclusion have created a distrust of the Government, and much work is needed to build confidence between Roma communities and the authorities.

VIII. Religious minorities

80. Representatives of religious communities consistently emphasized the generally harmonious relations with the majority population, and widespread religious tolerance. Muslim and other religious minorities reported positive experiences with regard to religious freedoms, and did not report systematic intolerance or hate acts.

81. One exception however is the treatment of Afro-religious communities, including Candomblé and Umbanda.[15] The Special Rapporteur is seriously disturbed by increasing reports of harassment, intimidation, hate speech and even acts of violence against individual members of Afro-religions. She learned about vandalism of places of worship, including the burning of temples and the desecration of Afro-religious symbols. Just during her two-week visit, two Candomblé temples were burned in the Federal District. Indeed, the Nelson Mandela Centre in Bahia reported that approximately one third of all complaints received pertain to intolerance against Afro-Religions.

82. Members of Afro-religions also experience discrimination and are targeted as a result of traditional dress, beads or symbols, which are often banned from the workplace (although other religious symbols such as crucifixes are not). *Terreiro* women domestic workers reported not being allowed to wear traditional clothes or religious symbols in their workplaces. There are also allegations of discrimination against children for wearing traditional dress in schools. Afro-religious leaders also reported being banned from performing symbolic rituals in hospitals for members of their faith.

83. Afro-religious practitioners perceive that the rise of Evangelicalism has impacted on their religious freedoms. Many *Terreiro* adherents report being harassed by Evangelicals, including through aggressive conversion efforts such as the distribution of or pasting of pamphlets in their *Terreiros*. The strong media ownership concentrated in the hands of Evangelicals has also been criticized as a way in which negative stereotypes of Afro-religions are disseminated. Such stereotypes include depictions of Afro-religions as devil worshippers, as those who practise voodoo, satanic rituals and black magic. It was also reported that some Evangelical groups had attempted to pass a bill criminalizing animal sacrifice, with the sole intent of criminalizing Afro-religious practices.

[15] See A/HRC/17/38/Add.1, paras. 79-81 and A/HRC/27/68/Add.1, paras. 99-101.

84. Concerns were raised that Afro-religions are not given equal protection as religions,[16] but rather considered as folklore or as a mere cultural manifestation. In this regard, it was noted that Afro-religious titles are not officially recognized on formal documents. Moreover, practitioners also expressed concern that many of their specific religious practices and symbols are appropriated without consent, in a perceived attempt to transform and dilute Afro-religious traditions and culture. In Bahia, certain Afro-religious traditions have been reproduced as cultural artefacts for tourism, without the consent of the communities.

85. The Special Rapporteur is also concerned that community members report widespread impunity surrounding attacks on their person, places of worship, or instances of discrimination, including against children in schools. Lack of responsiveness to complaints filed, or failure to investigate allegations, further contributes to a sense of marginalization and discrimination on the part of the communities. Moreover, the lack of accountability and trust in law-enforcement services has meant that followers of Afro-religions report feeling unsafe in their neighbourhoods and cities. The Special Rapporteur notes the need for police and judicial training in order to better ensure that the rights of *Terreiros* and their followers are protected.

86. The Special Rapporteur was pleased to learn that an interministerial working group on religious bigotry is being established under the Ministry of Justice. However, to date, no meeting has been convened. The Special Rapporteur notes that it is important that this body addresses the allegations of violence against members of Afro-religions and places of worship, and establishes tools to ensure that the perpetrators of such actions are held to account. However, it is equally important that it addresses the indirect discrimination, including through recognition and ensuring protection adequately and on an equal basis with other religions.

87. Finally, the Special Rapporteur observed that the increasing dominance of certain religious groups and their concentration in power may have a serious negative impact on the secularist nature of the Brazilian State. In this connection, the Rapporteur is concerned by proposed constitutional amendment No. 99 (PEC 99), which would give religious associations the capacity to challenge the constitutionality of laws and to propose constitutional amendments.

IX. Conclusions and recommendations

A. Conclusions

88. **Significant progress has been made on the policy and legislative level to combat the structural racism which continues to dominate Brazilian society. Indeed, given that many of these initiatives have been adopted only in the past decade, the Special Rapporteur commends Brazil on the steps it has taken to face its 500-year legacy of slavery, racism and injustice against minority groups, including Afro-Brazilians.**

89. **However with regard to Afro-Brazilians, despite more than two decades of targeted policies and actions designed to advance their rights, there has been a failure to address the entrenched discrimination, exclusion, and poverty faced by these communities, particularly those living in *favelas*, *periferias*, and *Quilombos*, as well as**

[16] Recently a Federal Court did consider that African-Brazilian religions should be afforded the protection of freedom of religion, as they cannot be considered a true religion. (Ação Civil Pública, Processo No. 0004747-33.2014.4).

other traditional communities. The statistical data reveals the disproportionate poverty and poor social and economic conditions experienced by many Afro-Brazilians. In key areas such as education, employment, health care and housing, Afro-Brazilians remain at the bottom of the socioeconomic ladder.

90. Racism and structural discrimination have a significant impact on the lives and opportunities available to Afro-Brazilians. They are a cause of marginalization and poverty and are directly linked to vulnerability and violence. While Brazilian society faces extraordinarily high levels of violence, regrettably this violence also has a clear racial dimension. Of further concern is that many deaths are perpetrated by arms of the State, including the military police, often with complete impunity.

91. In this connection, the Special Rapporteur also remains concerned about the increasing criminalization of Afro-Brazilians, as evidenced by their disproportionately high incarceration rates. This has been compounded by the "war on drugs", which has led to a sharp rise in the incarceration of Afro-Brazilians, and the mainstream media, which present stereotypical images of Afro-Brazilians, often in connection with crime.

92. Significant efforts are also needed to ensure that Quilombo communities are able to have their lands demarcated, in accordance with the constitution. Furthermore, there is an apparent lack of full harmonization of the Government's priorities for economic development with its commitments to the rights of Quilombo communities as well as other traditional peoples. This problem is manifested by the absence of adequate prior consultation and lack of implementation of the principle of free prior and informed consent in the planning and execution of major development projects such as dams, infrastructure projects, agribusiness crop production and natural resource extraction activities on the lands of these traditional communities.

93. With regard to religious minorities, Brazil remains a diverse society with a high degree of religious tolerance. One exception, however, are the reports of growing numbers of attacks against religious communities of African origin, such as *Candomblé* and *Umbanda*. Incidents include the burning of temples, the desecration of Afro-religious symbols, and discrimination against peoples wearing traditional Afro-religious dress, including children in schools. Further efforts are needed to combat this phenomenon, and to ensure that Afro-religions are recognized and respected.

94. The Special Rapporteur also acknowledges the new and important work being done on Roma. While many of these initiatives are nascent, the Government should strengthen and ensure the participation of Roma in the development of laws and policies affecting them in order to best respond to their needs.

B. Recommendations

1. Normative and institutional framework for the protection of the human rights of minorities

95. The Special Rapporteur emphasizes that Brazil has been at the forefront with its poverty reduction efforts and targeted anti-discrimination and affirmative action laws and policies, and urges that these should be continued and further strengthened. However, she observes that, at the current political juncture, there are a number of legal and political challenges to important laws and policies that pose a real risk of undermining the progress made in the field of minority rights. The Special Rapporteur urges that all steps be taken to avoid any regression in these areas, in accordance with due process of law.

96. **Following the merger of the Secretariats for Policies for the Promotion of Racial Equality, for Human Rights and for Policies involving Women's Rights in October 2015, the Special Rapporteur recommends that the merger does not lead to a reduction in function, budget, level of decision-making authority or programming capacity for these Secretariats. To the contrary, the new Ministry must be further empowered to ensure that minority rights remain a priority, not only within the Ministry, but throughout all levels of Government.**

97. **Positive initiatives, such as those in Bahia by the Public Ombudsman and the Nelson Mandela Centres should be fully resourced, and considered as good models for other states to replicate.**

98. **The Government of Brazil should also ensure that its national human rights institution is compliant with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), ensuring that it is both functionally and financially independent of government, and vested with the authority to investigate all issues relating to human rights, including those of minorities. This could be further enhanced by establishing a unit for minority rights, and through including dedicated training on minority rights for authorities, including for public officials, police forces, and judicial authorities.**

99. **Brazil should take swift action to submit its overdue combined eighteenth to twentieth periodic report to the Committee on the Elimination of Racial Discrimination, which was due on 4 November 2008.**

2. The situation of Afro-Brazilians

100. **The Government must better respond to the homicide crisis which is claiming a large number of Afro-Brazilian lives. Proper investigation must be carried out regarding cases of police violence, and all perpetrators must be brought to justice.**

101. **The Special Rapporteur noted an overall need for more and improved investment in community-led spaces and services in marginalized Afro-Brazilian neighbourhoods, as community-driven prevention mechanisms.**

102. **The Special Rapporteur would welcome the passage of Bill No. 4471 of 2012, which abolishes "resistance or arrest followed by death" and similar mechanisms (*auto de resistência*) as an important development to address the abuse of police power and impunity. However, she observes that this must be accompanied by other measures, including the restructuring of the police force, and in particular the abolition of the military police and the strengthening of the independent police ombudsman so that police can be held accountable.**

103. **Efforts must also be made to combat the criminalization of Afro-Brazilians, including re-examining the "war on drugs". The proposed constitutional amendment to lower the age of criminal responsibility of children to 16 years of age instead of 18 should be rejected, as it will further negatively impact Afro-Brazilian youth and contravenes the recommendations of the Committee on the Rights of the Child.**

104. **While affirmative action measures already taken are significant, concrete and robust, measures must be taken to continue to address the underrepresentation of Afro-Brazilians in political structures, State institutions and decision-making bodies at all levels. In this connection, the Special Rapporteur draws attention to the recommendations of the Forum on Minority Issues on minorities and effective political participation (see A/HRC/13/25) and urges their appropriate implementation.**

105. **In order to strengthen affirmative action policies, further efforts should be made to improve the quality and availability of education for minority youth, in**

particular in impoverished and rural settings, including in favelas, periferias, Quilombos and traditional communities. Efforts should be made to better implement law 10369 of 2003, as well as to strengthen the participation of minority communities in educational programming.

106. The Government should capitalize on the International Decade for People of African Descent (2015-2024) to strengthen and rigorously enforce the legal and administrative avenues currently in place to protect and promote the rights of Afro-Brazilians.

3. Quilombo and traditional communities

107. Regarding demarcation of traditional lands, more streamlined and efficient processes which better involve communities and ensure speedy appellate procedures will be necessary to meet the promise of the 1988 constitution.

108. Measures should be taken to improve the capacity of the National Institute for Colonization and Agrarian Reform and other relevant institutions to deal with conflicting interests in relation to Quilombo land and resources, and to work with state and local governments to implement such mechanisms and ensure that communities are protected from discrimination when trying to enforce their rights.

109. The right to free, prior and informed consent must be respected and enforced in relation to all decisions affecting Quilombo and other traditional communities. All public institutions, at both the federal and state levels, should be aware of and implement the relevant provisions of ILO Convention No. 169 and other applicable international instruments.

110. Quilombos are also often lacking access to basic services, such as education, access to health services and sanitation. The Government should maintain and increase its attention to these areas, as well as improve infrastructure, roads and access.

4. Afro-Brazilian religions

111. The freedoms accorded to traditional religious groups must be extended to all religious groups, including Afro-Brazilian religions, which must be treated not simply as folklore but recognized and protected by law and public policies as religions, on an equal basis with other religions.

112. Legislation must be enacted in order to ensure that Afro-religious *Terreiros* receive the same protection as other religious temples, taking into account their particularities.

113. Swift action must be taken against any incident of religious intolerance against Afro-religions, and the perpetrators of violence must be held directly accountable.

5. The rights of Roma

114. Concerted efforts need to be made to raise awareness about the existence of and the rights of Brazilian Roma, in order to change entrenched discriminatory attitudes and foster a sense of understanding and respect, and to protect and promote their distinct identity.

115. The Government is therefore encouraged to swiftly pass the bill on Roma and take all further steps to engage with the community; including through the further development of dedicated policies and programmes as well as ensuring their inclusion

in and access to existing initiatives, including but not limited to the areas of education, health care, employment and housing.

116. **The Government is also urged to constructively engage with Roma communities in order to allow them to communicate their concerns, and ensure that solutions are developed and that any decisions affecting them are made on the basis of participation and dialogue.**

6. Cross-cutting concerns

117. **Brazil has a commendable practice of collecting socioeconomic data disaggregated by race. Data collection plays a vital role in revealing inequalities between groups in society and informs appropriate actions to address them. This practice should be continued.**

118. **Brazil should consider establishing an independent media observatory to counterbalance concerns about the lack of positive representations of minorities in the media. Such an observatory should monitor the presence of negative stereotypes, criminalization and hate speech, in relation to minorities in the media, and provide avenues for participation for minority journalists within mainstream media outlets.**

119. **Brazil should provide technical and financial support to minority-led organizations and civil society organizations that offer services and support to minorities.**

120. **Brazil should establish local independent complaint mechanisms that are linked to a national body. This would ensure that all human rights violations can be immediately reported to a trusted body, and data on complaints centrally collected.**

121. **Particular attention should also be paid to multiple forms of discrimination, including for minority women, lesbian, gay, bisexual, transgender and intersex individuals and communities and youth.**

7. To the United Nations country team

122. **The United Nations country team should ensure that the specific needs of minorities are incorporated into its programming, including promoting concerted efforts for the implementation of the plan for the International Decade for People of African Descent by all United Nations agencies. In so doing, priority should be given to minority staff, including Afro-Brazilians, among others.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on minority issues on her mission to Brazil: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on minority issues on her mission to Brazil

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Report of the Special Rapporteur on minority issues on her mission to Brazil (14-24 September 2015): comments by the State*

Comments by the Brazilian Government on the advanced edited version of the report of the visit of the Special Rapporteur on minority issues to Brazil

Brazil thanks the Special Rapporteur for her report and for the positive references to policies and measures implemented by the Brazilian government with a view to guaranteeing the promotion and protection of the human rights of minorities and to enhancing their living conditions.

Brazil also thanks the Special Rapporteur for the comprehensive nature of the report, which reflected in its analysis and recommendations the complexity of the Brazilian landscape.

The Brazilian government seizes this opportunity to present clarifications and additional information on important issues covered by the Report.

Conditionalities of Social Programs

As mentioned by the report (paragraph 41), Brazil has largely met the Millennium Development Goals due to the successful implementation of social programs focused on the poorest. Hunger was eradicated and extreme poverty was reduced to a seventh: 3,5% in 2012, compared to 25,5% in 1990. People belonging to historically marginalized groups such as ethnic minorities (roma, quilombola and others) were the greatest beneficiaries.

It should be noted that such policies were designed to have a positive and structural impact in the struggle against extreme poverty in the long run. They secure health assistance and school attendance for children and, therefore, contribute to promote inclusion. Direct beneficiaries of "Bolsa Família" are preferably women and they have to comply with a series of conditions aimed at guaranteeing the well-being and health of the whole family:

(a) children between 6 and 15 years old have to be enrolled in school;

(b) children's school attendance must reach at least 85%;

(c) all changes related to the education of their children between 6 and 15 years old must be informed to local authorities in charge of the Program;

(d) pregnant and nursing women must be enrolled in prenatal care programs and attend prenatal appointments at the health unit closer to their place of residence and take part in educational activities on breastfeeding and the promotion of healthy nutrition; and

(e) parents of children below the age of 7 must take their children to health units regularly and comply with the immunization calendar established by the Ministry of Health.

Investigations of alleged abuses committed by the police

Concerning efforts to prevent and punish any kind of violence and abuse allegedly committed by the police, it is important to indicate that on January 4, 2016, the Superior Council of the Federal Police and the National Council of Civil Police Chiefs issued a joint resolution abolishing in the whole country the use of the terms "resistance followed by death" ("autos de resistência" or "resistência seguida de morte"), with a view to

* Reproduced as received.

guaranteeing that homicides committed by security agents are duly investigated. According to the resolution, all such incidents must be registered as "injury following opposition to police intervention" or "homicide following opposition to police action" and will be promptly investigated whenever they occur. The cases will be referred to the Public Prosecutor's Office, even when an internal procedure is initiated by the police. The Chief of Police in charge will investigate if the accused and those who helped him/her exercised adequate restraint in defending themselves or overcoming resistance offered by the victim.

Rights of traditional communities

The Brazilian government rejects the notion that Brazil prioritizes economic and development policies in detriment of the rights of traditional communities. Such allegation does not adequately reflect the Brazilian reality.

The Brazilian State puts in place all means available to ensure the compatibility between the legitimate wish of the society for wellbeing and economic development and the rights of such communities. To that end, the National Policy for the Environment establishes that development projects need environment licensing so that activities which risk to cause pollution or environmental degradation can be monitored. The issuing of an environment license follows a three phase process involving the issuing of a "provisional license", which approves the environmental viability of the project, without authorizing its implementation; an "establishment license" ("licença de instalação"), which authorizes the beginning of the work; and an "operation license", which authorizes the start of its operation. The process is conducted under the National System of the Environment (SISNAMA).

The agencies involved in the environmental licensing shall submit to the Brazilian Institute for the Environment (IBAMA) conclusive demonstration of the Environmental Study required for licensing. According to Interministerial Ordinance No. 419 (Oct 26th 2011), the Palmares Cultural Foundation is responsible for assessing the impacts on quilombola lands of development projects as well as the adequacy of the measures to control and mitigate any negative impact resulting from the project.

It should be underlined that, as a developing, medium-income country, Brazil sees no incompatibility between, on the one hand, much needed development investments and, on the other, the preservation of the environment and/or the guarantee of human rights. The State regulates and promotes investments and projects aiming at the welfare of the population, taking into account the diverse reality of the country and the specific needs of traditional populations.

Prior consultation is the main instrument established by international law in this regard. Even though prior consultation does not give veto power to the communities, Brazil aims to create conditions for the decision-making process to be transparent, informative, participatory and fair. This is the essence of the right to prior consultation, in line with ILO Convention 169.

Above all, the process should be conducted in good faith, ensuring traditional communities the right to receive accurate information; the opportunity to assess the impact of a given measure on their lives; and to request, when appropriate, relevant changes in the project or compensation for circumstantial damages.

International Law is flexible not only in relation to the forms and procedures to carry out the consultation, but also in relation to possible solutions that ensure the interests and rights of all parties - government, society, businesses and local communities. The government may seek creative solutions to accommodate the community's demands in good faith and in a transparent and inclusive manner.

Brazil has kept an open dialogue with the communities regarding major investment projects near their lands by holding public hearings and other mechanisms of social participation.

Quilombo dos Macacos

Another important aspect of the report is the concern over alleged human rights violations committed against members of the Rio dos Macacos community in Bahia.

The community vindicates as its traditional lands the area occupied by the naval village of Barragem, which is home to 450 military families. It is also used for training, as a base of operations and other strategic functions.

The disputed area became a property of the Navy in 1954, after a donation from the city of Salvador, the expropriation of private farms and a series of agreements of exchange of land with previous landowners. The goal of the Navy was to create "a bay for water capture for the Naval Base of Aratu and ancillary facilities, residential buildings and for administrative purposes, under the jurisdiction of the Ministry of the Navy".

So far, all court decisions involving that area favored the Brazilian Navy, which managed to prove the legality and legitimacy of the occupation of the land. The court also issued, from 2010 on, successive eviction warrants for the Rio dos Macacos' community, understanding that, in addition to the future needs of the Navy, the community's presence could cause environmental degradation and water pollution, since there are headwaters in this region that supply the Macacos dam. Enforced compliance with the eviction warrants has been deliberately postponed by the Brazilian government in order to secure a peaceful solution, with the relocation of families with dignity and in full respect of their human rights.

Since 2012, the Federal Government has offered the community several proposals of peaceful resettlement in other lands, as follows:

- 1st proposal (May 2012): resettlement in "Tombo de Paripe" - 7.5 hectares (ha);
- 2nd proposal (Dec 2012): resettlement in "Tombo da Vila Naval" - 21 ha;
- 3rd proposal (Oct 2013): resettlement in "Tombos da Vila Naval" and Paripe - 28.5 ha;
- 4th proposal (March 2014): resettlement in "Tombos da Vila Naval" - 86 ha; and
- 5th proposal (May 2014): resettlement in 104 ha of "Tombos da Vila Naval" and SUDIC.

Meanwhile, the National Institute for Settlement and Agrarian Reform (INCRA) launched the Administrative Procedure No. 54160.003162/2011-57, which deals with the regularization of the land of "Comunidade Remanescente de Quilombo Rio dos Macacos". INCRA's Ordinance 623, of November 16, 2015, has recognized and declared as the Macacos Community's land the 301.3695 ha area. It also determined that the procedure to regularize two areas amounting to 104.8787 ha (92 ha of which belonging to the Federal Government and under the administration of the Navy, legitimate owner of such land) continued.

The Navy agreed with such terms as a compromise solution that reconciles, on the one hand, the Community's demands and, on the other, the Navy property rights and the strategic interests for the Brazilian national defense.

The procedure is now in its final demarcation phase. Once concluded, land amounting to 104.8787 ha will be handled to the Community. It represents one third of the area currently under the administration of the Navy.

Hence, in view of all that, the allegation that the Navy has violated the Community's possession rights or split its land is clearly unfounded.

The compromise solution stems from a genuine effort of dialogue among federal, state and local bodies, as well as Community members. The Brazilian Navy remained engaged with all other stakeholders in order to reach a fair and negotiated solution, acceptable for all parties involved, even though the Judiciary had already determined that the community should have left the area a few years ago.

In addition, the information that members of the Community have their freedom of movement restricted is also incorrect. All the same, they never lost or had their access to their means of subsistence restricted, including their right to farm.

On the contrary, Community members have always had their right to come and go guaranteed, even using the main gate of the naval village of Barragem. For security reasons, the Navy keeps record of families and their members, as well as relatives and guests previously declared as regular visitors. Despite the dispute over the possession of the land, they all have their access to the area where the Community is established fully guaranteed.

The Government is taking measures to obtain the environmental permits to build a road that will guarantee an independent entrance for the community. The federal Government has also included Community members in social programs, such as "Saúde na Família" and "Bolsa Família". It has also adopted necessary measures to update and/or regularize their social security situation, and to improve sanitation, access to electricity and other public services in the area.

Finally, Brazil rejects allegations that members of the community "Quilombola Rio dos Macacos" face abuse and violence, including torture and sexual violence against women perpetrated by members of the Navy. Over the past few years, possibly due to the court decisions favoring the Navy, the relationship between the Navy and community members has been strained. Several allegations of arbitrary and violent actions committed by the military personnel have been presented in various forums, without any evidence to support them.

Numerous investigative procedures were initiated in order to verify the veracity of the allegations. No evidence or proof has ever been found, which suggests that the allegations are baseless. In any case, the Federal Prosecutor's Office and the Public Defender's Office are two independent bodies within the Brazilian legal framework to which members of the Community can resort in case of violations of their human rights.

In conclusion, Brazil reiterates its support to the work undertaken by the Special Rapporteur and its commitment to the promotion and protection of human rights of all ethnic, racial and religious minorities. Brazil will continue its efforts to ensure that all people can live under conditions of equal rights, proper living conditions, peace and security, without any discrimination.